राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 05 मई, 2016 / 15 वैशाख 1938

हिमाचल प्रदेश सरकार

INDUSTRIES DEPARTMENT
NOTIFICATION

Shimla-2, *the* 02nd *May,* 2016

No. Ind-A(F)17-3/2009-loose.—The Governor, Himachal Pradesh is pleased extend the validity period of the State Level Advisory Board for the development of MSME, constituted vide this department Notification No.Ind-A(F)17-3/2009 dated 05-06-2013, upto 31-03-2017.

By order,
Sd/-
Pr. Secretary(Inds.).

HIGHER EDUCATION DEPARTMENT

NOTIFICATION

Shimla-02, *the* 2nd *May,* 2016

No. EDN-A-Ka (1)-15/2013.—The Governor, Himachal Pradesh is pleased to order to take over the services of following Assistant Professors in different subjects of erstwhile Pt. Anant Ram Degree College, Baroh, Distt. Kangra, H.P. **on contract basis** subject to the terms and conditions as indicated in the notification.

The Governor, Himachal Pradesh is further pleased to post them on their fresh appointment as Assistant Professor (College Cadre) on contract basis at the place shown against their name(s):—

Sr.No.	Name	Father,s Name	Designation	Place of posting
1.	Sh. Rakesh Kumar	Sh. Ishwar Dass	Physics	Govt. College, Baroh.
2.	Smt. Poonam Sharma	Sh. Satish Kumar	History	Govt. College, Baroh.
3.	Sh. Aman Walia	Sh. Surinder Kumar	English	Govt. College, Sangrah (Sirmour).
4.	Sunita Devi	Sh. Om Prakash	English	Govt. College, Baroh.

Terms and conditions:—

1. The Assistant Professor (College Cadre) in the Department of Higher Education, H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis. The date of joining will be considered for counting of service for annual increase etc.

2. The Assistant Professor (College Cadre) appointed on contract basis will be paid consolidated fixed contractual amount @ Rs. 21,600 P.M. (Rs. Twenty one thousand and six hundred only) (which shall be equal to initial of the pay band + Grade Pay). An amount of Rs. 648/- as annual increase in contractual emoluments for the subsequent years will be allowed if contract is extended beyond one year and no other allied benefits such as senior/selection scales etc. shall be given.

3. The Addl. Chief Secretary/Principal Secretary/Secretary (Hr. Education) to the Government of Himachal Pradesh will be appointing and disciplinary authority.

4. He / she will not be governed by the rules, regulations and orders in force from time to time as applicable to other government servants such as CCS (CCA) Rules, 1965 and CCS (Conduct) Rules, 1964 as are applicable in Himachal Pradesh.

5. Before submitting the report to the Government the contract appointee shall sign an agreement as per Annexure –A.

6. The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.

7. During the contract service, no advance will be given to him/her.

8. Contractual Appointee Assistant Professor (Colleges) will be entitled for one day's casual leave after putting in one month service. However, the contract employees will also be entitled for 12 weeks Maternity Leave and 10 day's Medical Leave. He/She shall not be entitled for Medical Re-imbursement and LTC etc. No Leave of any other kind except above is admissible to the contractual appointee. Provided that the un-availed Casual Leave and Medical Leave can be accumulated upto the calendar Year and will not be carried forwarded for the next calendar Year.

9. Unauthorized absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination from the contract. Contract Appointee shall not be entitled for contractual amount for the period of absence from duty.

10. Transfer of a contract appointee will be permitted from one place to another after putting three years of service at one place.

11. Selected candidate will have to submit a certificate of his/her fitness from Medical Board, DDU Hospital, Shimla-1. Woman candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The woman candidate will be re-examined for the fitness.

12. Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular officials at the minimum of pay scale.

13. The candidate engaged on contract basis under these Rules shall have no right to claim for regularization/ permanent absorption as Assistant Professor (College cadre) in the Department at any stage.

14. The appointment is provisional and is subject to the educational qualification and other certificates being verified through proper channels and if the verification reveals that the claim to belong to reserve categories, as the case may be is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate.

15. He/She will have to give a declaration to the effect that he/she has only one living spouse, if married.

16. He/She will have to take an oath of allegiance/ faithfulness to the Constitution of India or making a solemn affirmation.

17. He/She will have to produce all the certificates in original at the time of joining this appointment.

If, the above terms and conditions are acceptable to him/her, should report for duty within a week from the issue of this Notification in the Government College mentioned against his/her name, failing which this offer of appointment shall stand cancelled and no further

correspondence shall be entertained in this behalf. No Travelling allowance will be allowed to join the contract appointment.

By order,
(P. C. DHIMAN),
Addl. Chief Secretary (Hr.Edu.).

No.EDN-A-Ka(1)15 /2013 *Dated:Shimla-02, 2nd May, 2016.*

Copy for information and necessary action to :—

1. The Director Higher Education, HP Shimla-01 with the direction to maintain the personal files of the newly contract appointee i.e. Assistant Professor and keep all the record of individual concerned. The DHE may also ensure that the newly contract appointee fulfill all the requisite educational qualification and other criteria required under the R & P Rules of the Assistant Professor (College Cadre).

2. The Principal, Government College concerned with the direction to submit the DOB certificates, medical fitness certificate and other certificates / credentials of the incumbent(s) to the Director of Higher Education after verifying the photocopies from the original certificates. He/She should also be administered oath as mentioned in Para 15, 16 and certificate to this effect be also sent to the Director of Higher Education. The Principal should accept joining as per the above Terms & Conditions including after production of Medical Fitness Certificate, Agreement duly signed by the candidate on Judicial Paper and completing all codal formalities.

3. The Secretary, H.P. Public Service Commission, Shimla-2.

4. The Under Secretary (Edu.-D) to the Govt. of Himachal Pradesh.

5. The Chief Medical Officer, DDU Hospital, Shimla-1 with the request to **send the medical fitness report / certificate to the Director of Higher Education, Himachal Pradesh, Shimla-1.**

6. The individual concerned (By name by Speed/registered post).

7. Guard file.

(PUSHPA CHAUDHARY),
Joint Secretary (Hr.Edu.) to the
Government of Himachal Pradesh.

ANNEXURE –A

Form of contract/agreement to be executed between the _____ (Name of the post) and the Government of Himachal Pradesh through _____ (Designation of the Appointing Authority).

This agreement is made on this _____day of_____in the year_____Between Sh./Smt. _____S/o/D/o Shri_____R/o_____

Contract appointee (hereinafter called the FIRST PARTY), AND the Governor of Himachal Pradesh through_____ (Designation of the Appointing Authority) Himachal Pradesh (here-in-after the SECOND PARY).

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Assistant Professor (College Cadre) on contract basis on the following terms & conditions:—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY as an Assistant Professor (College Cadre) for a period of 1 year commencing on day of _____ and ending on the day of _____ It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso-facto stand terminated on the last working day i.e. on_____And information notice shall not be necessary.

   Provided that for-further extension/renewal of contract period the HOD shall issue a certificate that the service and conduct of the contract appointee was satisfactory during the year and only then the period of contract is to be renewed / extended.

2. The contractual amount of the FIRST PARTY will be Rs. 21, 600/- per month.

3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good or if a regular incumbent is appointed / posted against the vacancy for which the first party was engaged on contract.

4. Contractual appointee i.e. Assistant Professor(Colleges) will be entitled for one day casual leave after putting in one month service. However, the Contract employee will also be entitled for 12 weeks Maternity Leave and 10 day's Medical Leave. She shall not be entitled for Medical re-imbursement and LTC etc. No leave of any other kind except above is admissible to the contractual appointee. Provided that the un availed Casual Leave and Medical Leave can be accumulated upto the calendar Year and will not be carried forward for the next calendar Year.

5. Unauthorized absence from the duty without the approval of the Controlling Officer shall automatically lead to the termination of the contract. A contractual appointee will not be entitled for contractual amount for the period of absence from duty.

6. An official appointed on contract basis who have completed three years tenure at one place of posting will be eligible for transfer on need based basis wherever required on administrative grounds.

7. Selected candidate will have to submit a certificate of her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnancy beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/Practitioner.

8. Contract appointee shall be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular counter-part official at the minimum of pay scale.

9. The Employees Group Insurance Scheme as well as EPF/GPF will not be applicable to contractual appointee(s).

IN WITNESS the FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS:

1. _____
   _____
   _____
   (Name and Full Address)

(Signature of the SECOND PARTY)

2. _____
   _____
   _____
   (Name and Full Address)

IN THE PRESENCE OF WITNESS:

1. _____
   _____
   _____

   (Name and Full Address)

(Signature of the FIRST PARTY)

2. _____
   _____
   _____
   (Name and Full Address)

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla, the 25th April, 2016

No: Shram (A) 6-1/2016 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act,1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court Shimla on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	77/2015	Sh. Amit Sharma V/s M/s C&E Ltd. Baddi.	03-03-2016

2.	31/2014	Smt. Nirmla Devi V/S Raja Forgings & Gear Ltd.	11-03-2016
3.	32/2014	Sh. Rajinder Kumar V/S –do-	11-03-2016
4.	39/2014	Smt Jaswinder Kaur V/S –do-	11-03-2016
5.	40/2014	Sh. Guman Singh V/S -do-	11-03-2016
6.	26/2011	Sh. Anil Kumar V/S M.D. H.P. Financial Corp. Shimla.	15-03-2016
7.	64/2014	Sh Jiya Lal V/S President School Management Committee & Others.	22-03-2016
8.	98/2010	Sh. Rangila Ram V/S M/S Perfect Security Panchkula & Others.	22-03-2016
9.	55/2015	Sh. Ram Gopal V/S HPPWD.	22-03-2016
10.	60/2012	Sh. Ram Singh Mehta V/S Z plus Security & Others.	28-03-2016
11.	42/2011	Smt. Seema V/S Sanitation Promotion & Others.	30-03-2016
12.	43/2011	Sh. Manoj V/S -do-	30-03-2016
13.	44/2011	Smt. Nirmala V/S -do-	30-03-2016
14.	45/2011	Smt. Zeerina V/S -do-	30-03-2016
15.	46/2011	Smt. Bimbla V/s Sanitation Promotion & Others.	30-03-2016
16.	47/2011	Sh. Satinder V/S -do-	30-03-2016
17.	51/2011	Sh. Palak Ram V/S -do-	30-03-2016
18.	29/2014	Smt. Santresh V/S -do-	30-03-2016
19.	59/2015	Sh. Ramesh Kumar V/S M/S Wipro Enterprises Ltd.	31-03-2016

By order,
Sd/-
Pr. Secretary (Lab. & Emp.).

3.3.2016.
Present: None for the petitioner.

Shri Alok Bhardwaj, Advocate has appeared on behalf of the respondent and filed memo of appearance.

Case called twice but none appeared on behalf of the petitioner. It is 10:50 AM. Be called again.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri Alok Bhardwaj, Advocate for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri Alok Bhardwaj, Advocate for respondent.

It is 3:05 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner despite the fact that he has been duly served for today as per the AD received back. Since, the petitioner has failed to appear before this Court despite having been duly served and to file claim petition which shows that he is not interested to pursue his claim arising out of the reference which has been sent by the appropriate government to this Court for adjudication, hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on file. The reference sent by the appropriate government for adjudication is as under:

> "**Whether termination of Shri Amit Sharma S/o Shri H.R Sharma Village Daryota, P.O Bhira, Tehsil & District Hamirpur HP by Employer/Management of M/s C& E Ltd., Chemical Division (unit-II) Village Judikalan, adjoining plot no. 69B Industrial Area Baddi District Solan, HP on account of resignation which has been alleged to be taken by the management under duress from above ex- worker, is legal and justified? If not, to what relief of reinstatement, back-wages, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"**

In the absence of any claim petition and evidence on behalf of petitioner, it cannot be held that his services were wrongly and illegally terminated by the respondent. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:

(Sushil Kukreja)
3.3.2016. *Presiding Judge,*
Labour Court, Shimla.

11.3.2016.
Present: Shri NiranjanVerma, Advocate for petitioner.
None for respondent.

Today, also correct address of respondent has not been filed. The record reveals that the respondent is not being served as the petitioner has failed to file correct address of the respondent despite repeated opportunities. The learned counsel for the petitioner today stated at bar that the correct address of the respondent is not available and cannot be served. Therefore, it will be a futile exercise to keep the reference pending particularly in view of the fact that the correct address of the respondent is not available and is notbeing served. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on the file. The following reference has been received from the appropriate government for adjudication:

"**Whether termination of services lf Smt. Nirmala Devi W/o Shri Soma Singh C/o Shri Joginder Singh Village Sandholi, P.O HaripurSandhol, Tehsil Baddi, District Solan HP by the Managing Director M/s Raja Forging & Gears Ltd., Sai Road Baddi District Solan, HP w.e.f. 1.3.2013 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex- worker is entitled to from the above employer?"**

As per reference received from the appropriate government, the petitioner has alleged hertermination of services by the respondent w.e.f. 1.3.2013 to be illegal and unjustified but the petitioner has failed to file the correct address of the respondent.Moreover, the petitioner has also failed to file any claim petition and to lead evidence which could go to show that she was illegally terminated by the respondent. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. However, the liberty is granted to the petitioner to agitate her termination of service, as and when the correct address of the respondent becomes available with her, by moving an application before this Court in order to revive the reference. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
11.3.2016.

(Sushil Kukreja)
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, HP INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA.

App. No. 13 of 2011.
Instituted on.21.6.2011.
Decided on. 31.3.2016.

Rajinder Kumar S/o Shri Janki Ram R/o Village Kasar, Tehsil Pachhad, District Sirmour, HP.

VS.

Petitioner.

- HP State Marketing Board, Khalini Shimla-2 through its Secretary.
- Market Committee Shimla and Kinnaur Regulated Market Complex, Dhallkli Shimla- 12, through its Secretary.

Respondents.

Petition under the Industrial Disputes Act, seeking declaratory relief.

For petitioner : Shri Peeyush Verma, Advocate.
For respondent no.1 : Ex-parte.
For respondent no.2 : Navlesh Verma, Advocate.

ORDER/AWARD

Briefly, the case of the petitioner is that he was engaged as clerk by the HP State Marketing Board in September, 1995 and worked as such till September, 2004, when his services had orally been terminated without due compliance of any provision of the Industrial Disputes Act, 1947 (hereinafter referred as to Act) despite the fact that the petitioner had been preforming his duties with zeal and devotion to the best of his capabilities and to the entire satisfaction of his superiors. It is further stated that the petitioner had completed 240 days in each calendar year and there was no complaint against him and even after the retrenchment of the petitioner, the respondents retained and employed the persons junior to him. It is also stated that the petitioner was falsely implicated in a criminal case at the instance of certain persons, though he was honorably acquitted by the Ld. JMIC in the false case and thereafter the petitioner approached the respondents with the written request for his re-engagement but of no avail. The petitioner had preferred a demand notice to the respondents which was taken up by the Labour-cum-Conciliation Officer Shimla for conciliation between the parties but the conciliation failed and the matter kept for reference to this Tribunal and a period of more than three months has expired from 16.8.2010 when the petitioner had preferred the demand notice. Against this back-drop, a prayer has been made for re-instatement with seniority and continuity along-with back- wages.

3 Respondent no.1 has not filed any reply and vide separate statement of Shri Sanjeev Sharma, Advocate, respondent no.1 has adopted the reply filed on behalf of respondent no.2. However, on 15.1.2014, the respondent no.1 was proceeded against ex-parte.

4 Respondent no.2 filed detailed reply wherein preliminary objections qua maintainability, time barred, estoppel, petition is bad for mis-joinder of parties and the petitioner has not approached this Court with clean hands. On merits, it has been asserted that the petitioner was engaged on daily wage basis by the committee to meet its exigency of services and avowed objects specified under the special Act of which it is a creation. It is denied that the petitioner was performing his duties with zeal and devotions to the best of his capability and to the entire satisfaction of his superiors and that he had completed 240 days in each calendar year. It is asserted that the petitioner had left the job on his own without seeking permission form the competent authority. It is further asserted that while the petitioner was serving as daily waged worker he was deputed at Check Post Neri Pul to collect levy as per the provisions of the Act ibid, it was discovered by the flying squad consisting of Chairman, Vice Chairman, Secretary of the Committee on checking that the petitioner was absent from duty on 6.9.2004 without any intimation and due to

his absence many trucks crossed the barrier/check post without payment of due market fees viz @ 1% of the total price of the produce/goods. It is also asserted that few days earlier a FIR bearing no. 66/2004 at Police Station Rajgarh under sections 420, 409, 465, 471, 468 and 120-B of IPC had been registered against the petitioner on the ground that the petitioner while performing his duties at the Check Post Neri Pul, had been cheating, misappropriating the government money for his personal use by forging documents, receipts etc. and after facing trial, he was acquitted by giving benefit of doubt. It is denied that the service record of the petitioner was excellent. It is further stated that there is no work available for the petitioner as new recruitments had been made to meet the exigency of the work. The respondent no.2 prayed for the dismissal of the claim petition.

5 By filing rejoinder, the petitioner has reiterated his allegations by denying those of the respondents.

6 Pleadings of the parties gave rise to the following issues which were struck on 22.6.2013.

- Whether the services of the petitioner were illegally and arbitrarily terminated in the month of September, 2004 as alleged?

  OPP…….

- If issue no.1 is proved in affirmative to what service benefits, the applicant is entitled to?

  OPP……..

- Whether this petition is not maintainable as alleged?

  OPR…….

- Whether this petition is time barred?

  OPR……..

- Whether the petitioner is estopped from filing this petition as alleged?

  OPR…….

- Whether this petition is bad for misjoinder and nonjoinder of necessary parties as alleged?

  OPR…….

- Relief.

7 I have heard the learned Counsel for the petitioner and respondent no.2 and have also gone through the record of the case carefully.

8 For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity w.e.f 11.8.2010 but without back wages.
Issue no.3	No.

Issue no.4	No.
Issue no.5	No.
Issue no.6	No.
Relief.	Reference answered in favour of the petitioner and against respondents per operative part of award.

Reasons for findings

Issue no.1

9 Ld. Counsel for petitioner contended that the petitioner had worked continuously with the respondent from Sept., 1995 till September, 2004 and completed 240 days in each calendar year but his services had been orally terminated by the respondent without following any provision of the Act and further that juniors to him were retained by the respondents. He further contended that consequent upon the judgment Ex. PW-1/A, passed by Ld. JMIC Rajgarh on 28.1.2010, the petitioner was acquitted of the offences punishable under section 420, 409, 465, 471, 468 and 120-B of IPC, the petitioner requested the respondents vide Ex. PW-1/C for his re-engagement but of no avail. Since, the services of the petitioner were terminated in utter violation of the provisions of the Act, he deserves to be reinstated alongwith all the consequential benefits including back wages.

10 On the contrary, learned counsel for respondent no.2 contended that the services of the petitioner had been engaged on daily wages basis to collect the market fee at the Check Post at Neri Pul and on 4th September, 2004, a flying squad consisting of Chairman, Vice Chairman and Secretary visited Neripul and found the petitioner absent from his duty and on enquiry it was revealed that from 2.9.2004, nobody was present at check post and an FIR was lodged against the petitioner and Police seized the record and due to absence of the petitioner the respondents suffered huge loss on account of non-collection of the due market fee at the check post. He further contended that thereafter the petitioner had not turned up for his duties and abandoned the job at his own and the respondents deployed other staff at the check post.

11 While appearing in the witness box as PW-1, the petitioner has deposed that he was engaged as daily wages clerk by the Committee in August, 1995 and remained posted at Market Committee Neri Pul Check Post till September, 2004 and then his services had been terminated by the respondent verbally without any reason by telling that since a case had been registered against him, his services were being terminated. He had worked round the clock even on Sundays and Holidays but his presence was not marked. No notice and compensation had been paid to him at the time of his termination. Neither show cause notice had been issued to him nor any enquiry was held. The case against him was decided by the JMIC Rajgarh, wherein he was acquitted vide judgment Ex. PW-1/A. Thereafter, he approached the respondents for his reinstatement vide Ex. PW-1/C and the reply filed by the respondents is Ex. PW-1/D and after 90 days he again approached the respondents for his reengagement but he was told vide letters Ex. PW-1/E and Ex. PW-1/F that his services could not be re-engaged as the then Chairman had engaged him without sanction in the year, 1995. He is unemployed after his retrenchment. In cross-examination, he stated that he has not brought any appointment letter and no agreement of appointment or contract of appointment was got signed between the parties. He remained at home only w.e.f. 2.9.2004 till 2010 and during this period, he was visiting the office of respondent at Shimla two or three times in a month. He denied that he had not given any representation/letter for his re-engagement. He admitted that in the criminal case, registered against him, he remained in custody for about 12 to 15

days. He denied that the respondents were engaging his services from time to time at different places. He further denied that after 2.9.2004, he on his own had not performed his duties.

12 On the contrary, respondent no.2 examined one Shri Bhagat Ram Garg, Assistant Secretary, who has stated that the petitioner was engaged by respondent no.2 on daily wage basis to collect the market fee at the check post at Neri Pul and on 4th September, 2004 a flying squad consisting of Chairman, Vice Chairman and he himself visited Neri Pul and found the petitioner absent from his duty. On enquiry, it was revealed that from 2.9.2004 nobody was present at check post Neri Pul and FIR was lodged against the petitioner and Police had seized the record. He further stated that due to absence of the petitioner from duty, the Market Committee had suffered huge loss on account of non-collection of the due market fee at the check post. Thereafter, the petitioner never turned up for duty and the Committee deployed other staff at the check post Neri Pul. In cross-examination, he admitted that the petitioner was engaged as clerk in September 1995 and he had worked till September, 2004 continuously. He denied that the Police had immediately informed the respondents about the lodging of the FIR. He admitted that no notice and chargesheet was issued and no enquiry was conducted against the petitioner. He denied that after release on bail, the petitioner visited the respondents to join his duties but he was not allowed to join. He admitted that the petitioner was acquitted by the Court on 28.1.2010. He further admitted that the petitioner had written a letter Ex. PW-1/C for joining with the respondents and thereafter respondent no.2 issued a letter Ex. PW-1/D to the petitioner and also wrote letters Ex. PW-1/E and Ex. PW-1/F to the respondent no.1. He also admitted that the issue of resumption of duties by the petitioner has still not been decided.

13 I have considered the respective contention of learned counsel for petitioner and respondent no 2 and had also scrutinized the record of the case minutely.

14 After the closer scrutiny of the record of the case, it has become clear that the services of the petitioner had been engaged by the respondent no.2 as daily wages clerk in the month of September 1995 and he worked as such till September, 2004 continuously. It is an admitted fact that on 2.9.2004, FIR was lodged against the petitioner under sections 420, 409, 465, 471, 468 and 120-B of IPC and after facing trial the petitioner was acquitted by the learned JMIC Rajgarh vide judgment Ex. PW-1/A. It is also an admitted fact that after acquittal, the petitioner represented the respondents for his re-instatement and submitted his joining report/letter Ex. PW-1/C which was duly replied by the respondents vide letter Ex. PW-1/D but the services of the petitioner had not been engaged. The only stand which has been taken by the respondents is to the effect that the petitioner was engaged on daily wages basis to collect the market fee at the Check Post at Neri Pul and on 4th September, 2004, a flying squad consisting of Chairman, Vice Chairman and Secretary visited Neripul and found the petitioner absent from his duty and on enquiry it was revealed that from 2.9.2004, nobody was present at check post and thereafter the petitioner never turned up for duty and the respondents deployed other staff at the check post. It has been admitted by RW-1 Shri Bhagat Ram in his cross-examination that no notice and chargesheet was issued and no enquiry was conducted against the petitioner. Since, the petitioner had been in continuous service of the respondents from the year, 1995 till September 2004, his services could not have been terminated without complying with the provisions of the Act. It is settled legal proposition that a workman, against whom misconduct is alleged, cannot be dismissed or discharged unless a proper domestic enquiry is held against him in respect of the alleged misconduct. Even, if the alleged misconduct is proved against the workman, he cannot be dis-charged or dismissed from service unless he has been afforded reasonable opportunity of being heard before initiating any action against him by the employer/respondent. Since, the petitioner had completed 240 days in twelve calendar months preceding his termination, a reasonable opportunity of being heard should have been afforded to him and proper enquiry should have been held before terminating his services. **In *D. K Yadav Vs.***

***M/s J.M A Industries Ltd. as reported in 1993-1 Supreme Court Service Law Judgments -221*, the Hon'ble Apex Court** has held as under:

> *"Reasonable opportunity be given to the employee concerned to put forth his case and proper enquiry be held before terminating his service."*

In a recent judgment of our **Hon'ble High Court in ILR-XLV (VI) 938 titled as Gurcharan Singh Deceased through his LR's Vs. State of HP and ors.** the workman was arrested and was convicted of the offence punishable under section 324 of the IPC and he was terminated without conducting any enquiry. The Hon'ble High Court has held that his termination could not have been ordered without conducting any enquiry as the workman had completed 240 days and was therefore entitled to the enquiry. The relevant portion of the aforesaid judgment reads as under:

> "8. The moot question is whether termination can be ordered without conducting any inquiry? The answer is in the negative for the following reasons:
>
> 9……..
>
> 10. While going through the impugned award and the writ petition, one comes to an inescapable conclusion that the termination of deceased Gurcharan Singh was made without following the mandate of law.
>
> 11……..
>
> 12…….
>
> 13. In the instant case, deceased Gurcharan Singh had completed 240 days in a calendar year, as discussed and held by the Labour Court, after scanning the evidence, the inquiry was required, not to speak of only issuance of the notice.

In the instant case, admittedly, the petitioner had worked with the respondents from the year, 1995 to 2.9.2004 continuously which fact is also clear from the cross-examination of RW-1 wherein he has admitted that the petitioner had worked continuously from the year 1995 till September, 2004 meaning thereby the petitioner had completed 240 working days in twelve calendar months preceding his termination. However, the petitioner was never asked to answer any charges as no chargesheet was issued to him and no enquiry was held before terminating his services, on the basis of the alleged misconduct. Moreover, the petitioner was acquitted by the learned JMIC Rajgarh vide judgment Ex. PW-1/A and thereafter he approached the respondents for his reinstatement but of no avail. Hence, the termination of the services of the petitioner without conducting any enquiry and without affording reasonable opportunity of being heard to the petitioner is in utter violation of the principles of natural justice. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondents to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

"2. I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

(2) Therefore, in view of my aforesaid discussion, as it is clear that the petitioner had worked for more than 240 days in twelve calendar months preceding his termination, the respondents were under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondents, hence, there is violation of section 25-F of the Act, on the part of respondents. As a result, the termination of petitioner from September, 2004 is not sustainable in the eyes of law and is hereby set aside.

(3) The learned counsel for the petitioner next contended that the respondents have violated the provisions of section 25-G and 25-H of the Act as after the termination of the services of the petitioner, the respondents have engaged/retained the juniors to the petitioner. RW-1 Shri Bhagat Ram has stated on oath that the petitioner never turned up for duty and the committee deployed other staff at the Check Post, Neri Pul. Thus, it has been proved on record that the respondents have engaged persons junior to him and no notice had been issued to the petitioner before terminating his services. **In 2007 LLR 72, State of Haryana Vs. Dilbagh Singh,** it has been held by the Hon'ble Apex Court that where persons junior to a workman were, still working with management, termination of services of workman being in violation of sections 25-G and 25-H of the Industrial Disputes Act providing for procedure for retrenchment and re-employment of retrenched workers will not be valid and legal.

(4) In the present case also, the petitioner has duly proved that after the termination of his services, juniors have been engaged/retained by the respondent whereas no notice was given to the petitioner by the respondents at any point of time calling upon him for his re- employment before the engagement of his juniors and as such the termination of services of the petitioner by the respondents in violation of the provisions of sections 25-G and 25-H of the Act is improper and unjustified as the respondents have violated the principle of "first come, last go".

(5) Thus, having regard to the entire evidence on record, I have no hesitation in holding that the services of the petitioner were illegally and arbitrarily terminated by the respondents in the month of September, 2004. Accordingly, this issue is decided in favour of petitioner and against respondents.

Issue no.2

(6) Since I have held under issues no.1 above that the termination of services of the petitioner by the respondents without following the provisions of the Act is illegal and unjustified, hence, the petitioner is ordered to be reinstated in service forth-with with seniority and continuity w.e.f. 11.8.2010 when he raised the demand notice.

(7) Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

(8) Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

(9) In the present case, the petitioner has failed to discharge his burden by placing any plausible material on record that he was not gainfully employed after his termination/disengagement. Except for his bald statement, there is nothing on record which could go to show that after his termination, the petitioner was not gainfully employed. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondents.

Issue no.3.

(10) The onus to prove this issue was on the respondents. However, respondents had failed to establish as to how the petition is not maintainable. It is not understandable as to how the petition is not maintainable especially when the same has been filed by the petitioner pursuant to the demand notice dated 11.8.2010. It has been specifically averred in the petition that the aforesaid demand notice was taken up by the Labour-cum-Conciliation Officer, Shimla for conciliation between the parties but the conciliation failed and the matter was kept for reference to this Court. It has further been stated in the petition that since a period of more than three months has expired

when the petitioner has preferred demand notice, the petitioner has filed this application directly before this Court without further awaiting for reference for adjudication of the dispute by the appropriate government. The aforesaid averments made by the petitioner have not been specifically denied by the respondents. Therefore, it cannot be said that the petition is not maintainable. Accordingly, issue no.3 is decided in favour of petitioner and against the respondents.

Issue no. 4

(11) The learned counsel for respondent no.2 contended that the petition filed by the petitioner is time barred as he has raised the dispute after a gap of six years. However, the law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in ***in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum-processing Service Society Limited and Another.*** *that:-*

> ***"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

It has also been held by the Hon'ble Supreme Court in **Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496** that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue.

(12) Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. Accordingly, this issue is decided in favour of the petitioner and against the respondents.

Issue no. 5 & 6.

(13) In support of these issues no evidence was led by the respondents. Moreover, respondents had failed to prove as to how the petitioner is estopped from filing the present petition and as to how the petition is bad for misjoinder and non-joinder of necessary parties. Accordingly, these issues are decided in favour of petitioner and against the respondents.

Relief

As a sequel to my above discussion and findings on issues no.1 to 6, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity w.e.f. 11.8.2010 when he raised the demand notice. However the petitioner is not entitled to back wages. Let a copy of this award/order be sent to the

appropriate government for publication in official gazette. File, after completion, be consigned to records. Announced in the open Court today on this 31st Day of March 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

23.2.2016.

Present: Shri Naveen Thakur, Advocate vice csl for petitioner**.**
None for respondents.

Again the correct address of respondents not filed. Further time prayed. In the interest of justice one last opportunity is granted to the petitioner to file correct address of the respondent on or before 11.3.2016.

11.3.2016.

(Sushil Kukreja)
Presiding Judge
Labour Court, Shimla.

Present: Shri NiranjanVerma, Advocate for petitioner.
None for respondent.

Today, also correct address of respondents has not been filed. The record reveals that the respondents are not being served as the petitioner has failed to file correct address of the respondents despite repeated opportunities. The learned counsel for the petitioner today stated at bar that the correct address of the respondentsis not available and cannot be served. Therefore, it will be a futile exercise to keep the reference pending particularly in view of the fact that the correct address of the respondents is not available and arenot being served. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on the file. The following reference has been received from the appropriate government for adjudication:

> "**Whether termination of services of Smt. JaswinderKaur W/o late Shri Ranga RamR/o Village Sandholi, P.O HaripurSandholi, Tehsil Baddi, District Solan HP w.e.f. 1.3.2013 by the employer /Managing Director (1) M/s Raja Forging & Gears Ltd., Sai Road Baddi District Solan, HP (Gear Unit) (ii) M/s Raja Forging and Gear Ltd., SCO 860, Shivalik Enclave, Manimajra Chandigarh (Regd. and Corporate office)without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"**

As per reference received from the appropriate government, the petitioner has alleged hertermination of services by the respondentsw.e.f. 1.3.2013 to be illegal and unjustified but the petitioner has failed to file the correct address of the respondents.Moreover, the petitioner has also

failed to file any claim petition and to lead evidence which could go to show that she was illegally terminated by the respondents. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. However, the liberty is granted to the petitioner to agitate her termination of service, as and when the correct address of the respondents becomes available with her, by moving an application before this Court in order to revive the reference. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
11.3.2016.

(Sushil Kukreja),
Presiding Judge
Labour Court, Shimla.

11.3.2016.
Present: Shri NiranjanVerma, Advocate for petitioner.
None for respondent.

Today, also correct address of respondent has not been filed. The record reveals that the respondent is not being served as the petitioner has failed to file correct address of the respondent despite repeated opportunities. The learned counsel for the petitioner today stated at bar that the correct address of the respondent is not available and cannot be served. Therefore, it will be a futile exercise to keep the reference pending particularly in view of the fact that the correct address of the respondent is not available and is not being served. Hence, this Court is left with no other alternative but to decide the reference on the basis of material whatsoever is available on the file. The following reference has been received from the appropriate government for adjudication:

> "**Whether termination of services of Shri Gurnam SinghS/o Shri Dalel SinghR/o Village Ram Nagar Kholi, P.O Nanakpur, Tehsil Kalka District Panchkula (HR) by the Managing Director M/s Raja Forging & Gears Ltd., Sai Road Baddi District Solan, HP w.e.f. 1.3.2013 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back- wages, seniority, past service benefits and compensation the above Ex-worker is entitled to from the above employer?"**

As per reference received from the appropriate government, the petitioner has alleged histermination of services by the respondent w.e.f. 1.3.2013 to be illegal and unjustified but the petitioner has failed to file the correct address of the respondent.Moreover, the petitioner has also failed to file any claim petition and to lead evidence which could go to show that he was illegally terminated by the respondent. Hence, in the absence of any claim petition/ evidence on record, the reference is answered against the petitioner. However, the liberty is granted to the petitioner to agitate his termination of service, as and when the correct address of the respondent becomes available with him, by moving an application before this Court in order to revive the reference. Let a copy of this order/award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
11.3.2016.

(Sushil Kukreja),
Presiding Judge
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Reference No. 26 of 2011.
Instituted on. 13.6.2011.
Decided on 15.3.2016.

Anil Kumar S/o Shri Ami Chand Thakur R/o Village Chewla, P.O Rodi via Totu, Tehsil & District Shimla, HP.

……*Petitioner.*

Vs.

The Managing Director, HP Financial Corporation Shimla, HP.

……*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Sumit Raj, Advocate.
For respondent **:** Shri Jagat Singh Shyam, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether verbal termination of the services of Shri Anil Kumar S/o Shri Ami Chand Thakur, daily wage chowkidar by The Managing Director HP Financial Corporation, Shimla w.e.f. 21.11.2006 without serving notice and without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, to what back-wages, service benefits and relief the above named daily wage chowkidar is entitled to?"

(a) Briefly, the case of the petitioner is that he had been engaged as daily wages chowkidar on 28.2.2006 by the respondent corporation for watch and ward at M/s S/L Industries Village Kandisar, P.O Fagu, Tehsil Theog, District Shimla and on 2.11.2006, his services had been terminated without following any proper procedure as contemplated under the Industrial Disputes Act, 1947 (hereinafter referred to as Act). The petitioner had worked continuously for 287 days without any break. It is further averred that the petitioner was forced to work on Sundays and other gazetted holidays and continuously for 24 hours while wages were paid only for 8 working hours @ ₹ 70/ per day and the numerous representation and requests of the petitioner for re-engagement fell deaf to the ears of the respondent. It is also averred that the petitioner had competed 240 days of continuous service in a calendar year preceding his retrenchment and after withdrawing the services of the petitioner, the respondent had engaged Shri Roshan Lal on 4.12.2006, in violation of section 25-H of the Act whereas no opportunity was given to the petitioner. Neither any notice under section 25-F of the Act nor the retrenchment compensation had been given to the petitioner, who is not employed in any service and is out of job since his illegal retrenchment. Against this back-drop the petitioner has prayed for his re-instatement in service with seniority and continuity along-with back-wages. The petitioner also prayed for payment of over-time.

(b) The respondent contested the claim of the petitioner by filing reply wherein preliminary objections have been taken that the petitioner was engaged as daily waged chowkidar on contract basis for watch and ward of assets of the industrial unit taken over under section 29 of the SFCs Act, 1951 by the respondent and as such the petitioner had to perform his duties for a limited period and his engagement was co-terminus with the sale of the Industrial unit under section 29 of the SFCs Act. Since, the unit was sold by the respondent, the services of petitioner were automatically discontinued in view of the terms of conditions of contract and conveyed to him verbally at the time of his engagement as daily waged chowkidar and written contract was agreed to be executed by him later on but the petitioner refused to execute the agreement-cum-undertaking on the prescribed proforma, hence, disengagement of the petitioner does not attract the definition of retrenchment. It is also asserted that the respondent had no regular vacancy of chowkidar and there is no industrial activity in the closed/sick units at the time of takeover of the assets by the respondent. It is further asserted that the respondent has not framed any rules for engaging the services of chowkidars in the taken over units and the wages to the petitioner were paid from the loan account of concerned industrial concern. On merits, it has been asserted that the respondent had sanctioned term loan of ` 6.08 lacs and soft loan of ₹ 2.34 lacs on 26.9.1997 for setting up an industrial unit for mushroom compost and mushroom processing to M/s S.L Industries but the said industrial concern committed persistent defaults in the repayment of outstanding loan dues and consequently the respondent had taken over the assets and as such the petitioner was engaged as daily waged chowkidar on 28.2.2006 for watch and ward of the taken over assets. It is further asserted that at the time of engaging the petitioner, it was made clear that his services were being engaged on purely temporary basis. The respondent had not violated any provision of law by disengaging the petitioner. The respondent prayed for the dismissal of the claim petition.

(c) No rejoinder was filed despite opportunities. Pleadings of the parties gave rise to the following issues which were struck on 12.3.2012.

- Whether the termination of the services of the petitioner by the respondent w.e.f. 21.11.2006, is in violation of the provisions of Industrial Disputes Act, 1947?

  OPP……..

- If issue no.1 is proved in affirmative, to what relief, the petitioner is entitled to?

  OPP…..

- Whether there were no industrial activities in the closed units at the time of take-over of the assets?

  OPR……..

- Relief.

(2) Besides having heard the Learned Counsels for the parties, I, have also gone through the record of the case carefully.

(3) For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement with seniority and continuity but without back-wages.
Issue no.3	Yes.

Relief. Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issue no.1

(4) The learned counsel for the petitioner contended that the services of the petitioner have been terminated by the respondent without complying with the mandatory provisions of the Act as neither any notice was served upon him nor he was paid compensation. He further contended that the petitioner had completed more than 240 days in one calendar year and juniors to him are still working with the respondent and his services have been terminated without any reason and even no opportunity of being heard was afforded to him before terminating his services. The learned counsel also contended that the petitioner was forced to work on Sundays and other gazetted holidays and that too for 24 hours whereas the wages were being paid to him only for 8 working hours per day.

(5) On the other hand, learned counsel appearing on behalf of the respondent contended that the petitioner had worked as daily waged chowkidar on contract basis for watch and ward of assets of the industrial units taken over under section 29 of the SFCs Act and as such the engagement of the petitioner was co-terminus with the sale of the industrial unit, hence, the petitioner is not entitled for the protection of sections 25-F, 25-G and 25-H of the Act.

(6) To prove his case, the petitioner has appeared himself as PW-1 and stated that he had been working as daily waged chowkidar w.e.f 28.2.2006. He was engaged for watch and ward of industry at Theog and worked as such till 22.11.2006 continuously for 24 hours. He was working day and night whereas the respondent was paying him ` 70/- per day for eight hours and no wages for remaining 16 hours had been paid to him. When he demanded for the wages of 16 hours, he was terminated from service without any notice. The respondent had engaged some other daily wagers after his termination. He had worked for 24 hours per day continuously for 287 days. In cross-examination, he admitted that he was engaged on daily wages only as chowkidar at the unit of S.L industry. He denied that at the time of his engagement, it was made clear to him that his services had been engaged only for S.L Industry or till the same was sold. He denied that he was called by the respondent to execute an agreement and he refused to sign the same. He further denied that when he had not signed the agreement, his services had been terminated by the respondent in November, 2006. He admitted that after his termination one Shri Roshan Lal was engaged as chowkidar. He denied that Roshan Lal and Diwan Singh were engaged on co-terminus basis. He also denied that he had not worked for 287 days. He denied that he is working on daily wages basis these days at some other place.

(7) To rebut the case of the petitioner, the respondent has examined one Shri R.P Sandhu, Deputy Manager as RW-1, who has tendered his affidavit Ex. RW-1/A in examination-in- chief wherein he reiterated almost all the averments as made in the reply. In cross-examination, he admitted that the duty of the petitioner as chowkidar was for 24 hours and the petitioner has discharged his duties continuously from 28.2.2006 till 22.11.2006. He further admitted that no over-time charges have been paid to the petitioner and no written agreement was executed with him (petitioner) regarding the contractual employment. He also admitted that no written letter was issued to petitioner to call upon him to execute an agreement with the respondent and no notice was issued to the petitioner before his termination. He admitted that after the disengagement of the petitioner, two new persons were appointed as chowkidar and the respondent had engaged various persons as daily wages chowkidars after the year, 2006 in the taken over units only.

(8) I have closely scrutinized the entire evidence, on record, and from the closer scrutiny thereof it has become clear that the petitioner had worked as daily waged chowkidar for watch and ward of taken over assets with the respondent w.e.f. 28.2.2006 till 22.11.2006. It is also an admitted fact that the petitioner had worked for 287 days continuously prior to his retrenchment. The case of the respondent is to the effect that the services of the petitioner had been engaged for specific period as chowkidar for watch and ward of taken over assets and his services were co-terminus with the sale of taken over unit. However, no material has been produced on record that the petitioner was engaged for specific period as chowkidar and his services were co-terminus with the sale of taken-over unit. The further case of the respondent is to the effect that the petitioner had to execute specific written contract with the respondent in the shape of agreement-cum-undertaking and the petitioner had agreed to execute the same but when the respondent corporation called upon the petitioner to execute the aforesaid agreement, he had failed to execute the same and as such the respondent had dis-engaged his services. However, to this effect also no material has been produced by the respondent corporation. Except for the bald statement of RW-1, there is no evidence on record to suggest that the petitioner had been engaged for specific period on co-terminus basis with the sale of taken-over unit and he had failed to execute an agreement with the respondent corporation regarding the contractual employment. Rather, in cross-examination RW-1 Shri Ram Pal Sandhu, Deputy Manager, categorically admitted that the petitioner had discharged his duties continuously w.e.f. 28.2.2006 till 22.11.2006. He further admitted that no written agreement was executed with the petitioner regarding the contractual employment and that no letter in writing was issued to the petitioner to call upon him to execute an agreement with the corporation. The respondent has failed to prove on record that the services of the petitioner were engaged for specific period on contract basis as no material in this regard was brought on record by the respondent. Admittedly, neither any notice nor any letter was issued to the petitioner by the respondent calling upon him to execute an agreement. In normal circumstances, the agreement is executed with the person prior to or at the time of engagement of his services and not thereafter. The respondent had failed to explain as to why the services of the petitioner were engaged before executing the agreement as alleged by it. Therefore, in the absence of any evidence on record, it cannot be believed that after the services of the petitioner were engaged, the respondent had called upon him to execute the agreement regarding his contractual employment.

(9) It is an admitted fact that the petitioner had completed more than 240 days in a calendar year preceding his termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

(10) In the present case also before terminating the services of the petitioner, the respondent had not complied with the conditions precedent to the retrenchment as per section 25-F of the Act which are mandatory in law.

(11) The learned counsel of the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondent as such the respondent had violated the principles of "last come first go". It has been admitted by RW-1 Shri Ram Pal Sandhu, Deputy Manager in his affidavit Ex. RW-1/A that the respondent had engaged the services of Roshan Lal and Diwan Singh as daily wager chowkidar after the dis-engagement of the services of the petitioner. In cross-examination he also admitted that after the disengagement of the petitioner two new persons were engaged as chowkidars and the respondent had also engaged various persons as daily rated chowkidars after the year 2006 in the taken over units. Thus, from the evidence, on record, it has been proved that after the disengagement of the services of the petitioner, fresh workers have been engaged without giving an opportunity to the petitioner for re-employment, which is clear cut violation of section 25-H of the Act.

2. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner w.e.f. 21.11.2006, by the respondent without complying with the provisions of the Act, is illegal and unjustified.

3. Consequently, the petitioner succeeds to prove this issue, to which my answer is in the affirmative.

Issue no.2.

4. Since I have held under issue no.1 above that the termination of services of the petitioner by the respondent without following the provisions of section 25-F of the Act is illegal and unjustified, hence, the petitioner is held entitled to reinstatement in service with seniority and continuity.

5. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

6. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

> "16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

7. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue no.3.

8. To prove this issue no evidence has been led by the respondent. Hence, in the absence of any evidence on record, this issue is decided in favour of petitioner and against the respondent.

Relief

As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 15th Day of March 2016.

(Parveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

Ref No. 64 of 2014

Sh Jiya Lal V/s President , School Management Committee, Govt primary School & others

22.3.2016:-

Present:- Sh R.K.Khidtta, Advocate for the petitioner.

Shri H.N.Kashyap ADA for the respondent .

Today also claim not filed by the petitioner. Learned counsel for the petitioner prayed for one more opportunity . Prayer considered but cannot be allowed in view of the fact that for filing of claim the petitioner has availed various opportunities but failed to file the claim. The record reveals that the present reference has been received by this Court on 13.8.2014 and since then the case is being listed for filing of claim . Since , the petitioner has failed to file statement of claim, this Court is left with no other alternative but to close the right of the petitioner to file the statement of claim and to proceed further to decide the reference on the basis of material whatsoever is available on the file. The following reference has been sent by the appropriate government for adjudication to this Court:

> **" Whether termination of the services of Shri Jiya Lal S/o Shri Yash Pal R/o Village kandi, P/o Dharmpur) Mandhan), Tehsil Theog, District Shimla HP who was engaged as cook- cum-helper for Mid-day-Meal Scheme byi). The Preseident School Management Committee Government Primary School Sunder Ghat, Kandi Tehsil Theog, District Shimla, HP & ii)The Primary Education Officer, Theog District Shimla. HP during the year , 2012, without complying with the provisions of the industrial Dispute Act,1947 id legal and justified ?If not, what amount of back-wages, seniority, past servicebenefits and compensation the above worker is entitled to from the above employers?.**

From the above reference, it is clear that the petitioner has challenged his termination during the year, 2012 to be illegal and unjustified but no statement of claim in support thereof has been filed buy him. In the absence of any claim petition and evidence on behalf of petitioner, it cannot be held that his services were wrongly and illegally terminated by the respondents. Hence, the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:-

22.3.2016

Sd/-
(Sushil Kukreja)
Presiding Judge Labour Court, Shimla.

22.3.2016
Present: Petitioners with ShriNirnajanVerma, Advocate for petitioners.
Shri O.P Batra, Advocate for respondent no.1.
Ms. VeenaSood, Advocate vice csl. for respondent no.2

At this stage, vide separate statements recorded today, it has been stated by all the petitioners that they have settled the dispute with the respondent no.1 and received payment of Rs. 17,500/- each vide cheques of HDFC Bank as full & final settlement of their claim and nothing is due from any of the respondents and they prayed that the reference be decided accordingly.

From the perusal of the statement of the petitioners, it is clear that the petitioners have settled the dispute with the respondents and received payment of Rs. 17,500/- each through cheque from respondent no.1 and now nothing is due from any of the respondents. Since, the matter has been settled between the parties amicably as such the reference is ordered to be answered accordingly and the award is passed in terms of the statements of the petitioners which shall form part of this award. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
22.3.2016.

(Sushil Kukreja)
Presiding Judge, Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 55 of 2015.
Instituted on. 31.7.2015.
Decided on 22.3.2016.

Ram Gopal S/o Shri Liaq Ram R/o Village Harloti, P.O Khara, Tehsil Sunni, District Shimla, HP.

Vs.

……*Petitioner.*

The Assistant Engineer, HPPWD Sub Division no.1, Winter Field Shimla, HP.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.L Sharma, Advocate.

For respondent **:** Shri H.N Kashyap, ADA.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of the services of Shri Ram Gopal S/o Shri Laiq Ram R/o Village Harloti, P.O Khara, Tehsil Sunni, District Shimla, HP by the Assistant Engineer, HPPWD Sub Division no.1 Winter Field, Shimla HP w.e.f. 1.4.1996 without

complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view the delay of about 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

7. In nutshell, the case of the petitioner is that initially he was appointed as beldar on 8.7.1990 and was deputed in the HPPWD Sub Division Winter Field. He worked continuously w.e.f. 8.7.1990 till 31.3.1996, when his services had been dis-engaged w.e.f. 1.4.1996. It is further averred that the petitioner had completed more than 240 working days in each calendar year and the work being performed by the petitioner was that of clerk in the HP Secretariat but the muster roll of beldar was issued to him. The services of certain persons namely Sunita, Anil Kumar, Rakesh, Ved Parkesh etc. who do not fall in the sub division their services have been regularized/conferred work charge status. It is also averred that the petitioner vide representations dated 4.11.1996, 15.6.1999, 9.4.2002, 24.1.2005 and 1.4.2008 had also submitted before the respondent but till date no response has been received. There was sufficient work available with the respondent and the persons junior to him are still working. Against this back-drop a prayer for his re-engagement, along-with back-wages and other consequential service benefits has been made.

8. By filing reply, the respondent had contested the claim of the petitioner wherein preliminary objections had been taken qua maintainability, barred by limitation, hit by the principles of resajuidcata and abandonment. On merits, it has been asserted that initially the petitioner was engaged as daily waged beldar on muster roll basis on 23.8.1991 and worked only for four years w.e.f. 23.8.1991 to 30.3.1996 and he was never asked to work as supervisor or clerk in H.P Secretariat. The petitioner had abandoned his job at his own without any intimation to the respondent department. It is denied that the petitioner had made representations dated 4.11.1996, 15.6.1999, 9.4.2002, 24.1.2005 and 1.4.2008 to respondent. It is asserted that the new persons who have been appointed/kept on daily wages basis had performed their duties continuously and regularly whereas the petitioner had left the job at his own and had not competed 10 years of service as this criteria is essential for regularization. It is admitted that the petitioner had competed 240 days only in the years 1992 to 1995. The documents mentioned from serial no.1 to 5 and 7 seem to be fabricated as the same have been prepared later on just to mislead this Court. The respondent prayed for the dismissal of the claim petition.

9. Rejoinder not filed. Pleadings of the parties gave rise to the following issues which were struck on 17.12.2015.

- Whether the termination of the services of the petitioner w.e.f. 1.4.1996 without complying with the provisions of Industrial Disputes Act, 1947 is illegal and unjustified?

  OPP……

- If issue no.1 is proved in affirmative to what relief of service benefits the petitioner is entitled to?

  OPP……..

- Whether the petition is not maintainable as alleged?

  OPR……..

- Whether the petition is barred by Limitation?

  OPR……..

- Whether the petition is hit by the principles of res-judicata as alleged?

  OPR…….

- Relief.

10. Besides having heard the learned counsel for the parties, I have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement from the date when the petitioner raised demand notice.
Issue no.3	No.
Issue no.4	No.
Issue no.5	No.
Relief.	Reference answered in favour of the petitioner and against the respondent per operative part of award.

Reasons for findings

Issues no.1 & 4.

12. Being interlinked and co-related, both these issues are taken up together for discussion and decision.

13. The learned counsel for the petitioner contended that the services of the petitioner had been terminated by the respondent illegally without serving him any notice as required under section 25-F of the Act especially when he had completed more than 240 days in each calendar year. He further contended that the petitioner represented several times for his re-engagement but of no avail and even junior persons to the petitioner are still working with the respondent department and fresh workers have been engaged.

14. On the other hand, Ld. ADA for the respondent contended that the services of the petitioner had never been terminated by the respondent, who himself had abandoned his job without intimation to the respondent department. He further contended that the petitioner had raised the industrial dispute after a gap of about 14 years, hence, at this stage, he is not entitled to any relief as prayed for.

15. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PA in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. He also tendered in evidence representation dated 4.11.1996, Ex. PB vide UPC receipt Ex. PC, representation dated 15.6.1999 Ex. PD vide UPC receipt Ex. PE, representation dated 9.4.2002 Ex. PF vide UPC receipt Ex. PG, representation dated 24.1.2005 Ex. PH vide UC receipt Ex. PJ, representation dated 1.4.2008 Ex. PK vide UPC receipt Ex. PL and the certificate of Pradhan Gram Panchyat Chebdi dated 3.4.2015, Ex. PM. In cross-examination, he denied that all the representations have been written in same pen and in the same hand and that all the representations have been written on same day. He also denied that the post office date in all postal receipts have been tempered and no representation had been made by him to the department from the year, 1996

till the year, 2010. He admitted that the present case had been filed by him after a gap of fourteen years.

16. On the contrary, the respondent examined one Shri Ravi Bhatti, Assistant Engineer, as RW-1, who tendered his affidavit Ex. RW-1/A in examination-in-chief wherein he reiterated almost all the averments as stated in the reply. He also tendered in evidence copy of order dated 13.5.2015 of Hon'ble High Court Ex. RW-1/B and mandays chart of the petitioner Ex. RW-1/C. In cross-examination, he admitted that no notice was issued to the petitioner to resume the duties. He denied that the petitioner had not abandoned his job and that the petitioner had visited many times and also made various representations on different dates to re-instate him in service. He admitted that the department had engaged many fresh persons after the termination of the services of the petitioner.

17. The first question which arises for consideration before this Court is as to whether the petition is barred by limitation. It is not in dispute that the petitioner had worked till March, 1996 with the respondent and he raised the industrial dispute before Labour-cum-Conciliation Officer, Shimla on 5.8.2010 after a gap of about 14 years. The law on the point is well settled that no limitation is prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the Industrial Dispute. The Hon'ble Supreme Court in its various judgments has held that the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay. It has been held by the Hon'ble Supreme Court in ***in (1999) 6 SCC 82, titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.*** *that:-*

> ***"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone"***

It has also been held by the Hon'ble Supreme Court in **Gurmail Singh Vs. Principal Government College of Education and others, (2009) 9 SCC 496** that mere delay in challenging the termination would not be a bar to the adjudication of the matter but could only deprive the appellant of his back wages for the period of delay in raising the termination issue. In a latest judgment, the **Hon'ble Supreme Court in 2014, 10 SCC 301 titled as Raghubir Singh Vs. General Manager, Haryana Roadways Hissar** has held that Limitation Act has no application to reference made by the appropriate government to Labour Court/Industrial Tribunal for adjudication of existing industrial dispute. The relevant portion of the aforesaid judgment is reproduced as under:

> "16 **Further, the workman cannot be denied to seek relief only on the ground of delay in raising the dispute as held in the case of S.M. Nilajkar & Ors. v. Telecom District Manager, Karnataka it was held by this Court as follows:**
>
> > **"17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree..... In Ratan Chandra Sammanta and Ors. v. Union of India and Ors. (supra)1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and**

rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief....." (Emphasis supplied).

17 In view of the legal principles laid down by this Court in the above judgment, the reference of the industrial dispute made in the case on hand by the State Government to the Labour Court to adjudicate the existing industrial dispute between the parties was made within a reasonable time, considering the circumstances in which the workman was placed, firstly, as there was a criminal case pending against him and secondly, the respondent had assured the workman that he would be reinstated after his acquittal from the criminal case. Moreover, it is reasonable to adjudicate the industrial dispute in spite of the delay in raising and referring the matter, since there is no mention of any loss or unavailability of material evidence due to the delay. Thus, we do not consider the delay in raising the industrial dispute and referring the same to the Labour Court for adjudication as gravely erroneous and it does not debar the workman from claiming rightful relief from his employer".

Therefore, the aforesaid law declared by the Hon'ble Supreme Court in various context makes the legal position clear that there is no limitation prescribed either under the Industrial Disputes Act or under the Limitation Act for raising the industrial dispute. The provision of Article 137 of the schedule to the Indian Limitation Act, 1963 is not applicable to the proceedings under the Act and the relief under the Industrial Disputes Act cannot be denied to the workman merely on the ground of delay.

18. In the back-ground of the aforesaid legal position, in the instant case, the services of the petitioner were terminated in March, 1996 and thereafter the petitioner had been approaching the respondent against his illegal termination for his reinstatement and had submitted the representations dated 4.11.1996 Ex. PB, Ex. PD dated 15.6.1999, Ex. PF dated 9.4.2002, Ex. PH dated 24.1.2005 and Ex. PK dated 1.4.2008 and all the aforesaid representations have been sent by the petitioner through UPC receipts seeking reinstatement. Thereafter, the petitioner raised the Industrial Dispute and the matter was referred to Labour-cum-Conciliation Officer, who submitted the failure report of the Labour Commissioner. However, the Labour Commissioner refused to make the reference on the ground of delay and latches. Thereafter, the petitioner filed CPW no. 238 of 2012 before the Hon'ble High Court of HP wherein the Hon'ble High Court directed the Labour Commissioner to make the reference to the Labour Court-cum-Industrial Tribunal and thereafter the present reference has been received by this Court for adjudication. Therefore, in view of the facts and circumstances of the present case, the petitioner cannot be blamed for the delay in raising the present dispute as he was all along hoping that one day his grievance will be considered by the respondent and had kept his dispute alive. Moreover, it is not the case of the respondent that due to the delay in raising the industrial dispute, there is any loss or unavailability of material evidence. Hence, it cannot be said that delay in raising the industrial dispute is fatal to the reference and as such the petitioner cannot be debarred from claiming the relief from his employer and mere delay in challenging the termination would not be a bar to the adjudication of the present dispute which has been referred to this Court by the appropriate government.

19. From the closer scrutiny of the record, it has become clear that initially the petitioner was engaged as beldar on daily wages basis by the respondent in the month of August, 1991 and worked as such till March, 1996. Admittedly, as per mandays chart Ex. RW-1/C, the petitioner had worked for 100 days in the year, 1991, 282 days in 1992, 365 days in 1993, 316 days in 1994, 329 days in 1995 and 90 days in 1996. From the mandays chart Ex. RW-1/C, it is also clear that the petitioner had completed 240 working days in twelve calendar months preceding his termination. It

is also an admitted fact that neither any notice had been issued to the petitioner nor he was paid compensation. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. However, in the present case, the perusal of the record shows that the respondent has failed to comply with the provisions of section 25-F of the Act. **In (2015) 4 SCC 544, Mackinnon Mackenzie and Company Ltd., Vs. Mackinnon employees Union**, the Hon'ble Apex Court has held as under:

> "34. ……**The Industrial Court after examining the facts and evidence on record has rightly answered the question of breach of Section 25F clause (b) in the negative since no evidence has been produced by the respondent-Union to prove the same and further no calculation is brought to our notice as to the amount received by way of retrenchment compensation and also the actual amount sought to have been paid to the retrenched workmen. Further, with regard to the provision of Section 25F clause (c), the appellant-Company has not been able to produce cogent evidence that notice in the prescribed manner has been served by it to the State Government prior to the retrenchment of the concerned workmen. Therefore, we have to hold that the appellant- Company has not complied with the conditions precedent to retrenchment as per Section 25F clauses (a) and (c) of the I.D. Act which are mandatory in law."**

20. In the present case also admittedly no notice under section 25-F of the Act was issued to the petitioner before terminating his services. Hence, In view of the law laid down by the Hon'ble Supreme Court (supra) and my foregoing observations, I have no hesitation in holding that the termination/disengagement of the services of the petitioner w.e.f. 1.4.1996 by the respondent without complying with the provisions of section 25-F of the Act, is illegal and unjustified.

21. The learned counsel of the petitioner next contended that at the time of the termination of the petitioner, the respondent had retained his juniors who are still working and besides this even fresh persons have been engaged by the respondent as such the respondent had violated the principles of "last come first go". It has been admitted by RW-1 Shri Ram Gopal, Assistant Engineer, in his cross-examination that the department had engaged fresh workers after the termination of the services of the petitioner. Thus, from the evidence, on record, it has been established that after the disengagement of the services of the petitioner, fresh workers have been engaged by the respondent without giving an opportunity to the petitioner for re-employment, which is clear cut violation of section 25-H of the Act.

17. The learned ADA for the respondent next contended that the petitioner had left the job at his own after 30.3.1996. However, there is no iota of evidence on record which could go to show that the petitioner had left the job on his own as no notice or letter regarding abandonment of the job by the petitioner is placed on record by the respondent. Even RW-1 Shri Ram Gopal, Assistant Engineer, has admitted in cross-examination that no notice was issued to the petitioner to resume the duties. Although RW-2 Shri Kuldeeep Singh deposed that after the year 1996, the petitioner had not reported for work. However, in the absence of any record no reliance can be placed upon his oral testimony. Therefore, in the absence of any record, inference cannot be drawn that the petitioner had abandoned the job. Reliance is placed on decision reported in **AIR 1979 SC 582 case titled as G.T Lad and others Vs. Chemicals and Fibers India Ltd.** where it has been held that:

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265:**

(AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."

Hence, in view of the law laid down (supra), and also in view of the evidence led by the parties, it cannot be said that the petitioner had left the job at his own.

1. Thus, having regard to entire evidence on record and in view of above cited rulings and my foregoing observations, I have no hesitation in holding that the termination of the services of the petitioner w.e.f. 1.4.1996, by the respondent without complying with the provisions of the Act, is illegal and unjustified. Accordingly, both these issues are decided in favour of the petitioner and against the respondent.

Issue no.2.

2. Since I have held under issues no.1 & 2 above that the termination of services of the petitioner by the respondent without following the provisions of the Act is illegal and unjustified. Now, it has to be seen as to what service benefits the petitioner is entitled to. Admittedly, the present dispute has been raised by the petitioner after a gap of 14 years, hence, keeping in view all the facts and circumstances of the case, the petitioner is held entitled to reinstatement in service with seniority and continuity with effect from the date when he raised the demand notice.

3. Now, the question which arises for consideration, before this Court is as to whether the petitioner is entitled to full back wages as contended by the learned counsel for the petitioner. In **(2009) 1 SCC 20, Kanpur Electricity Supply Company Limited Vs. Shamim Mirza,** the Hon'ble Supreme Court has held that once the order of termination of services of an employee is set-aside, ordinarily, the relief of reinstatement is available to him. However, the entitlement of an employee to get reinstated does not necessarily result in payment of full or partial back-wages, which is independent of reinstatement. It has further been held by the **Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s Ritu Marbals Vs. Prabhakant Shukla that** full back wages cannot be granted mechanically, upon an order of termination be declared illegal. It is further held that reinstatement must not be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry.

4. Moreover, the petitioner was under an obligation to prove by leading cogent evidence that he was not gainfully employed after the termination of his services. The initial burden is on the workman/employee to show that he was not gainfully employed as held by the **Hon'ble Apex Court in (2005) 2 Supreme Court Cases 363 titled as Kendriya Vidyalaya Sangathan and another Vs. S.C Sharma** that :

"16……..When, the question of determining the entitlement of a person to back-wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places materials in that regard, the employer can bring on record materials to rebut the claim……."

5. In the present case, the petitioner has failed to discharge his burden by placing any material on record that he was not gainfully employed after his termination/disengagement. Moreover, the petitioner had raised the present dispute after a gap of about 14 years, hence, the back-wages cannot be granted to him after such a long gap of 14 years. Therefore, in view of the entire evidence, on record, coupled with the rulings (supra), I have no hesitation in holding that the petitioner is not entitled to any back-wages. Accordingly, issue no.2 is partly decided in favour of the petitioner and against the respondent.

Issue No.3.

6. In support of this issue, no evidence has been led by the respondent. However, the petitioner has filed this claim petition pursuant to the reference made by the appropriate government to this Court for adjudication and I find nothing wrong with this petition which is perfectly maintainable. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No.5.

7. To prove this issue no evidence was led by the respondent to show that as to how the petition is hit by the principles of res-judicata. Hence, in the absence of any evidence, this issue is decided in favour of the petitioner and against the respondent.

Relief.

As a sequel to my above discussion and findings on issues no.1 to 5, the claim of the petitioner succeeds and is hereby partly allowed and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity with effect from the date when he raised the demand notice. However the petitioner is not entitled to back wages and as such the reference is ordered to be answered in favour of the petitioner and against the respondent. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open Court today on this 22nd Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

28.3.2016.
Present: None for the petitioner.
ShriRupesh Sharma, Advocate vice csl for respondent.

Case called twice but none appeared on behalf of the petitioner. It is 10:50 AM. Be called again.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Shri Rupesh Sharma, Advocate vice csl. for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(Sushil Kukreja)
Presiding Judge, Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Shri Rupesh Sharma, Advocate vice csl. for respondent.

It is 3:05 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner.

For today, this case has been fixed for the evidence of the respondent. At this stageShriRupesh Sharma, Advocate Ld. vice csl for respondent has stated at bar that since the petitioner has failed to lead any evidence in support of his case arise out of the reference which has been sent by the appropriate government to this Court, the respondent also does not want to lead any evidence. Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on file. The reference sent by the appropriate government for adjudication is as under:

"**Whether termination of Shri Ram Singh Mehta Ex-serviceman R/o Village Tihana, P.O Chanair, Tehsil Theog District Shimla, HP by i) The Manager M/s Z Plus Security Service Cell Railway Chowk, Tehsil Joginder Nagar District Mandi ii) M/s Longjian Road Add Bridge Ltd., Company Hotel Farmer Nest, Near Huli, P.O Chhaila, Tehsil Theog District Shimla, HPw.e.f. 23.4.2011 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"**

The petitioner has filed the statement of claim and the respondent also filed reply to the same. Thereafter, on the pleadings of the parties, the following issues were framed by this Court on 11.3.2014.

4. Whether the termination of the services of the petitionerw.e.f. 23.4.2011 is illegal and unjustified as alleged?

OPP……..

5. If issue no.1 is proved in affirmative to what service benefits, the petitioner is entitled to?

OPP…….

6. Whether this petition is not maintainable as alleged?

OPR……..

7. Whether this petition is bad for non-joinder of necessary parties as alleged?

OPR……..

8. Relief:

It may be pertinent to mention here that despite repeated opportunities, the petitioner has failed to lead evidence in support of his case and therefore, on 15.3.2016, this Court has closed the evidence of the petitioner. Since, the petitioner has failed to lead any evidence in support of issues no.1 & 2 above, I have no hesitation in coming to the conclusion that he has failed to prove that his services had been terminated w.e.f. 23.4.2011 by the respondents in an illegal and unjustified manner. Hence, in the absence of any evidence on record, it cannot be held that his services were wrongly and illegally terminated by the respondents. Accordingly, issues no. 1 & 2 are decided in favour of the respondents and against the petitioner. As far as issues no. 3 & 4 are concerned, the onus of prove these issues was on the respondents but they have also failed to lead any evidence in support thereof, hence, these issues are decided against the respondents. Hence, in view of the aforesaid back- ground, the reference is ordered to be answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
28.3.2016.

(SushilKukreja)
Presiding Judge,
Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 42 of 2011.
Instituted on. 1.11.2011.
Decided on 30.3.2016.

Seema W/o Shri Babloo R/o Village Dublu, P.O Janedghat, District Shimla, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……*Petitioner.*

Vs.

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 : Already ex-parte.

For respondent no.2. : Shri Vivek Kalia, Advocate vice Shri M.P Kanwar, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Smt. Seema W/o Shri Babloo R/o Village Dublu, P.O Janedghat, District Shimla, HP w.e.f. 28.11.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving her an opportunity of consideration for re-employment by the employers from the date her juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare her direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that in the month of March, 2008, she was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but her name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though her name remained on the roll of contractor till her termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas her name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes she had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and her name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be an employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding her termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even

juniors have been retained by the respondents in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made her integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against her. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and she be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to her by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated her services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by her is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

5. Whether the termination of the services of the petitioner w.e.f. 28.11.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

6. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

7. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

8. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

9. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of her joining of services and she is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding her termination and her termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered her affidavit Ex. PA in examination-in-chief wherein she reiterated almost all the averments as made in the claim petition. In cross-examination, she stated that she cannot produce any appointment letter issued by

respondent no.2 and any other proof and she also cannot produce any salary certificate issued by respondent no.2. She admitted that she along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. She further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment she had put her signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. She denied that her services were terminated by respondent no.1 but explained that her services had been terminated by respondent no.2. She denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that she was the employee of respondent no.2 (university) whereas the University had stated that she was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

> *7.* Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

> 12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to

whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the

Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53. 13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that she was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, she admitted that neither she cannot produce any appointment letter or documentary proof by the respondent no.2 University appointing her as safaikarmachari nor any salary certificate issued by respondent no.2 University. She further admitted that she along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. She also admitted that the respondent no.1 contractor had made payment to settle the claim and she had put her signatures on the receipt Ex. R-1. She further admitted that the contractor used to pay her salary @ Rs. 70/- per day. She denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay her salary @ ₹ 70 per day. As per her own admission, neither any appointment letter nor any salary certificate was issued to the petitioner by the University rather she had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to her to settle the claim and she had put her signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.2 University. RW-1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same the respondent no.2 university invited tenders for

outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2 and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8. Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in her claim petition as well as in her affidavit by way of evidence Ex. PA has stated as PW-1 that she was engaged as safaikaramchari in the month of March, 2008 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, her evidence is sufficient to prove that she had worked for 240 days in twelve calendar months preceding her termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."
>
> **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana),** the Hon'ble Supreme Court has held that

the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that she had worked continuously for more than 240 days in twelve calendar months preceding her termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating her services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 28.11.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 28.11.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

28. In the present case, even though the termination of the petitioner is held to be illegal but her reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ` 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ₹ 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 43 of 2011.
Instituted on. 1.11.2011.
Decided on 30.3.2016.

Manoj Kumar S/o Shri Chunnu Ram R/o Village & P.O Nauni District Solan, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……Petitioner. Vs.

3. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

4. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 : Already ex-parte.

For respondent no.2. : Shri Vivek Kalia, Advocate vice Shri M.P Kanwar, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Shri Manoj Kumar S/o Shri Chunnu Ram R/o Village & P.O Nauni District Solan, HP w.e.f. 13.10.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving him an opportunity of consideration for re-employment by the employers from the date his juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare her direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that on 17.7. 2007, he was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but his name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though his name remained on the roll of contractor till his termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas his name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes he had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and his name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be an employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding his termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents

in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made his integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against him. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and he be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to him by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated his services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by him is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

10. Whether the termination of the services of the petitioner w.e.f. 13.10.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

11. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absence of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

12. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

13. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

14. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of his joining of services and he is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding his termination and his termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PA in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he stated that he cannot produce any appointment letter issued by respondent no.2 and any other proof and he also cannot produce any salary certificate issued by

respondent no.2. He admitted that he along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. He further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment he had put his signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. He denied that his services were terminated by respondent no.1 but explained that his services had been terminated by respondent no.2. He denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that he was the employee of respondent no.2 (university) whereas the University had stated that he was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

> *7.* Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

> 12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to

whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the

Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the

contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53. 13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, he admitted that neither he can produce any appointment letter or documentary proof by the respondent no.2 University appointing him as safaikarmachari nor any salary certificate issued by respondent no.2 University. He further admitted that he along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. He also admitted that the respondent no.1 contractor had made payment to settle the claim and he had put his signatures on the receipt Ex. R-1. He further admitted that the contractor used to pay him salary @ Rs. 70/- per day. He denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay him salary @ ₹ 70 per day. As per his own admission, neither any appointment letter nor any salary certificate was issued to the petitioner by the University rather he had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to him to settle the claim and he had put his signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.2 University. Moreover, RW-1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same the respondent no.2 university invited tenders for outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2

and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8. Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in his claim petition as well as in his affidavit by way of evidence Ex. PA has stated as PW-1 that he was engaged as safaikaramchari on 17.7.2007 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, his evidence is sufficient to prove that he had worked for 240 days in twelve calendar months preceding his termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."
>
> **In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana),** the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25- F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……..."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that he had worked continuously for more than 240 days in twelve calendar months preceding his termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 13.10.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 13.10.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice."

28. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the

present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ` 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ` 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 44 of 2011.
Instituted on. 1.11.2011.
Decided on 30.3.2016.

Nirmala Devi W/o Shri Pritam Singh R/o Near Congress Bhawan, P.O Saproon, District Solan, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……Petitioner. Vs.

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 : Already ex-parte.

For respondent no.2. : Shri Vivek Kalia, Advocate vice Shri M.P Kanwar, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Smt. Nirmala Devi W/o Shri Pritam Singh Near Congress Bhawan, District Solan HP w.e.f. 13.10.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving her an opportunity of consideration for re-employment by the employers from the date her juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare her direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that on 20.12.2007, she was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but her name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though her name remained on the roll of contractor till her termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas her name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes she had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and her name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be a employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding her termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made her integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against her. Against this back-drop a prayer has been made that the petitioner be declared the

employee of the University and she be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to her by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated her services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by her is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

15. Whether the termination of the services of the petitioner w.e.f. 113.10.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

16. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

17. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

18. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

19. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of her joining of services and she is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding her termination and her termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered her affidavit Ex. PA in examination-in-chief wherein she reiterated almost all the averments as made in the claim petition. In cross-examination, she stated that she cannot produce any appointment letter issued by respondent no.2 and any other proof and she also cannot produce any salary certificate issued by respondent no.2. She admitted that she along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. She further admitted that the respondent no.1 had made payment to

settle the claim and to receive the said payment she had put her signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. She denied that her services were terminated by respondent no.1 but explained that her services had been terminated by respondent no.2. She denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that she was the employee of respondent no.2 (university) whereas the University had stated that she was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

> *7.* Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

> 12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules

framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53. 13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that she was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, she admitted that neither she can produce any appointment letter or documentary proof by the respondent no.2 University appointing her as safaikarmachari nor any salary certificate issued by respondent no.2 University. She further admitted that she along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. She also admitted that the respondent no.1 contractor had made payment to settle the claim and she had put her signatures on the receipt Ex. R-1. She further admitted that the contractor used to pay her salary @ Rs. 70/- per day. She denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay her salary @ ₹ 70 per day. As per her own admission, neither any appointment letter nor any salarycertificate was issued to the petitioner by the University rather she had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to her to settle the claim and she had put her signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.1 University. Moreover, RW-1 Shri V.K Sharma,

Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same the respondent no.2 university invited tenders for outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2 and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8.Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in her claim petition as well as in her affidavit by way of evidence Ex. PA has stated as PW-1 that she was engaged as safaikaramchari on 20.12.2007 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, her evidence is sufficient to prove that she had worked for 240 days in twelve calendar months preceding her termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that she had worked continuously for more than 240 days in twelve calendar months preceding her termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating her services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 13.10.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 13.10.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

28. In the present case, even though the termination of the petitioner is held to be illegal but her reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ₹ 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ` 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 45 of 2011.
Instituted on. 1.11.2011.
Decided on 30.3.2016.

Zeerina W/o Shri Sadhu Ram R/o Village Degu, P.O Narag, District Sirmour, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……*Petitioner. Vs.*

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 : Already ex-parte.

For respondent no.2. : Shri Vivek Kalia, Advocate vice Shri M.P Kanwar, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Smt. Zeerina W/o Shri Sadhu Ram R/o Village Degu, P.O Narag, District Sirmour, HP w.e.f. 28.11.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving her an opportunity of consideration for re-employment by the employers from the date her juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare her direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that on 20.11.2007, she was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but her name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though her name remained on the roll of contractor till her termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas her name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes she had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and her name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be a employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding her termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents

in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made her integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against her. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and she be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to her by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated her services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by her is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

20. Whether the termination of the services of the petitioner w.e.f. 28.11.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

21. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer

and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

22. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

23. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

24. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of her joining of services and she is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding her termination and her termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered her affidavit Ex. PA in examination-in-chief wherein she reiterated almost all the averments as made in the claim petition. In cross-examination, she stated that she cannot produce any appointment letter issued by respondent no.2 and any other proof and she also cannot produce any salary certificate issued by respondent no.2. She admitted that she along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. She further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment she had put her signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. She denied that her services were terminated by respondent no.1 but explained that her services had been terminated by respondent no.2. She denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that she was the employee of respondent no.2 (university) whereas the University had stated that she was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

> *7.* Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in

proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that she was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, she admitted that neither she can produce any appointment letter or documentary proof by the respondent no.2 University appointing her as safaikarmachari nor any salary certificate issued by respondent no.2 University. She further admitted that she along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. She also admitted that the respondent no.1 contractor had made payment to settle the claim and she had put her signatures on the receipt Ex. R-1. She further admitted that the contractor used to pay her salary @ Rs. 70/- per day. She denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay her salary @₹ 70 per day. As per her own admission, neither any appointment letter nor any salary certificate was issued to the petitioner by the University rather she had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to her to settle the claim and she had put her signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt

of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.2 University. RW-1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same the respondent no.2 university invited tenders for outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2 and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8. Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in her claim petition as well as in her affidavit by way of evidence Ex. PA has stated as PW-1 that she was engaged as safaikaramchari on 20.11.2007 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, her evidence is sufficient to prove that she had worked for 240 days in twelve calendar months preceding her termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for

counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that she had worked continuously for more than 240 days in twelve calendar months preceding her termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating her services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 28.11.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 28.11.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an

employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

28. In the present case, even though the termination of the petitioner is held to be illegal but her reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ₹ 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ` 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 46 of 2011.

Instituted on. 1.11.2011.

Decided on 30.3.2016.

Bimla W/o Shri Mohan Singh R/o Village Nauni, P.O Oachghat, District Solan, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……*Petitioner.*

Vs.

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 : Already ex-parte.

For respondent no.2. : Shri Vivek Kalia, Advocate vice Shri M.P Kanwar, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Smt. Bimla W/o Shri Mohan Singh R/o Village Nauni, P.O Oachghat, District Solan, HP w.e.f. 29.11.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving her an opportunity of consideration for re-employment by the employers from the date her juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare her direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that in the month of March, 2008, she was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but her name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though her name remained on the roll of contractor till her termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas her name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes she had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and her name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any

valid licence of contractor, the workmen deemed to be a employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding her termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made her integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against her. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and she be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petition in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to her by the respondent directly and even the work performed by the petitioner had never controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointment the petitioner as safai karmachari in the University nor terminated her services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by her is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

25. Whether the termination of the services of the petitioner w.e.f. 29.11.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

26. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

27. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

28. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

29. Relief.

7. Besides having heard the learned AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. Learned AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of her joining of services and she is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding her termination and her termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and

employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered her affidavit Ex. PA in examination-in-chief wherein she reiterated almost all the averments as made in the claim petition. In cross-examination, she stated that she cannot produce any appointment letter issued by respondent no.2 and any other proof and she also cannot produce any salary certificate issued by respondent no.2. She admitted that she along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. She further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment she had put her signatures on the receipt Ex. R-1 encircled red. The respondent no.1 used to pay the salary towards @ 70/- per day. She denied that her services were terminated by respondent no.1 but explained that her services had been terminated by respondent no.2. She denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two RWs. RW-1 Shri V.K Sharma, Executive Engineer, who tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that she was the employee of respondent no.2 (university) whereas the University had stated that she was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

7. Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate

Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated

in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and

where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53. 13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that she was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, she admitted that neither she cannot produce any appointment letter or documentary proof by the respondent no.2 University appointing her as safaikarmachari nor any salary certificate issued by respondent no.2 University. She further admitted that she along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. She also admitted that the respondent no.1 contractor had made payment to settle the claim and she had put her signatures on the receipt Ex. R-1. She further admitted that the contractor used to pay her salary @ Rs. 70/- per day. She denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 suggests that the contractor used to pay her salary @ ₹ 70 per day. As per her own admission, neither any appointment letter nor any

salary certificate was issued to the petitioner by the University rather she had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to her to settle the claim and she had put her signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no evidence on record to suggest that the petitioner and other workers were under the direct supervision of respondent no.1 University. RW- 1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. Ex. R-2 and E. R-6 are the notices inviting tenders for outsourcing of sweeping work in the University, Ex. R-3 and Ex R-7 are the letters issued to the respondent no.1 contractor by the Executive Engineer (Const) of the respondent University regarding approval of the rates quoted by the respondent no.1 contractor, Ex. R-4 is the letter written by University to the contractor whereby the request of contractor for extension for the start of the sweeping work has been accepted, Ex. R-5 is the letter for extension of sweeping arrangement, and Ex. R-8 is the letter written by respondent University for approval of the extension of sweeping arrangement at University. Therefore, the perusal of the aforesaid documents shows that the respondent no.1 University had outsourced the arrangements of the sweeping work and had entered into a contract with the respondent no.1 contractor. Moreover, the University is not a private body and in view of the aforesaid documents Ex. R-2 to Ex. R-8, it cannot be said that the contract entered by the University with the contractor was sham, ingeniune and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in her claim petition as well as in her affidavit by way of evidence Ex. PA has stated as PW-1 that she was engaged as safaikaramchari in the month of March, 2008 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, her evidence is sufficient to prove that she had worked for 240 days in twelve calendar months preceding her termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

> "2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section

25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that she had worked continuously for more than 240 days in twelve calendar months preceding her termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating her services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 29.11.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 29.11.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of

reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

28. In the present case, even though the termination of the petitioner is held to be illegal but her reinstatement will not be appropriate relief in view of the fact that the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ` 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ₹ 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 47 of 2011.
Instituted on. 1.11.2011.
Decided on 30.3.2016.

Satinder S/o Shri Leela Ram R/o Village Bathival, P.O Dilman, Teshil Pachhad District Sirmour, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……*Petitioner.*

Vs.

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 **:** Already ex-parte.

For respondent no.2. **:** Shri Vivek Kalia, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Shri Satinder S/o Shri Leela Ram R/o Village Bathival, P.O Dilman, Teshil Pachhad District Sirmour, HP w.e.f. 26.10.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving him an opportunity of consideration for re- employment by the employers from the date his juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare him direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that in the month of August, 2007, he was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but his name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though his name remained on the roll of contractor till his termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas his name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes he had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and his name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be an employee of the University. The

petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding his termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made his integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against him. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and he be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to him by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated his services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by him is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

1. Whether the termination of the services of the petitioner w.e.f. 26.10.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

2. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

3. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

4. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

5. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of his joining of services and he is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding his termination and his termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and

employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PA in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he stated that he cannot produce any appointment letter issued by respondent no.2 and any other proof and he also cannot produce any salary certificate issued by respondent no.2. He admitted that he along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. He further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment he had put his signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. He denied that his services were terminated by respondent no.1 but explained that his services had been terminated by respondent no.2. He denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that he was the employee of respondent no.2 (university) whereas the University had stated that he was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

7. Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate

Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed

out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over

the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53.13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, he admitted that neither he can produce any appointment letter or documentary proof by the respondent no.2 University appointing him as safaikarmachari nor any salary certificate issued by respondent no.2 University. He further admitted that he along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. He also admitted that the respondent no.1 contractor had made payment to settle the claim and he had put his signatures on the receipt Ex. R-1. He further admitted that the contractor used to pay him salary @ Rs. 70/- per day. He denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay him salary @ ₹ 70 per day. As per his own admission, neither any appointment letter nor any

salary certificate was issued to the petitioner by the University rather he had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to him to settle the claim and he had put his signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.2 University. Moreover, RW-1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same the respondent no.2 university invited tenders for outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2 and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8. Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in his claim petition as well as in his affidavit by way of evidence Ex. PA has stated as PW-1 that he was engaged as safaikaramchari in the month of August, 2007 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, his evidence is sufficient to prove that he had worked for 240 days in twelve calendar months preceding his termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

"2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that he had worked continuously for more than 240 days in twelve calendar months preceding his termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 26.10.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 26.10.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

28. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ` 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ₹ 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 51 of 2011.
Instituted on. 14.11.2011.
Decided on 30.3.2016.

Palak Ram S/o Shri Prem Dutt R/o Village Danal P.O Panawa, Teshil Pachhad District Sirmour, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP.

……*Petitioner.*

Vs.

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 **:** Already ex-parte.

For respondent no.2. **:** Shri Vivek Kalia, Advocate.

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Shri Palak Ram S/o Shri Prem Dutt R/o Village Danal P.O Panawa, Teshil Pachhad District Sirmour, HP w.e.f. 28.11.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving him an opportunity of consideration for re- employment by the employers from the date his juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare him direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that in the month of 20.11.2007, he was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but his name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though his name remained on the roll of contractor till his termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas his name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes he had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control of University and his name on the roll of contractor amounts to

unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be an employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding his termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents in violation of the provisions of section 25-G and 25-h OF the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made his integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against him. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and he be re-instated in service with seniority and continuity along-with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to him by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated his services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by him is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed his allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 8.7.2013.

6. Whether the termination of the services of the petitioner w.e.f. 28.10.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

7. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

8. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

9. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

10. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of his joining of services and he is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the

petitioner had completed 240 working days in each calendar year preceding his termination and his termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered his affidavit Ex. PA in examination-in-chief wherein he reiterated almost all the averments as made in the claim petition. In cross-examination, he stated that he cannot produce any appointment letter issued by respondent no.2 and any other proof and he also cannot produce any salary certificate issued by respondent no.2. He admitted that he along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. He further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment he had put his signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. He denied that his services were terminated by respondent no.1 but explained that his services had been terminated by respondent no.2. He denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that he was the employee of respondent no.2 (university) whereas the University had stated that he was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

> *7.* Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……
>
> 12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……
>
> As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

> "20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.
>
> 22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."
>
> The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to

deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38.The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53. 13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that he was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, he admitted that neither he can produce any appointment letter or documentary proof by the respondent no.2 University appointing him as safaikarmachari nor any salary certificate issued by respondent no.2 University. He further admitted that he along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. He also admitted that the respondent no.1 contractor had made payment to settle the claim and he had put his signatures on the receipt Ex. R-1. He further admitted that the contractor used to pay him salary @ Rs. 70/-

per day. He denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay him salary @ ₹ 70 per day. As per his own admission, neither any appointment letter nor any salary certificate was issued to the petitioner by the University rather he had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to him to settle the claim and he had put his signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.2 University. Moreover, RW-1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same the respondent no.2 university invited tenders for outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2 and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8. Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in his claim petition as well as in his affidavit by way of evidence Ex. PA has stated as PW-1 that he was engaged as safaikaramchari on 20.11.2007 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, his evidence is sufficient to prove that he had worked for 240 days in twelve calendar months preceding his termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days

is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

"2. I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that he had worked continuously for more than 240 days in twelve calendar months preceding his termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating his services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 28.11.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 28.11.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

> "It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

28. In the present case, even though the termination of the petitioner is held to be illegal but his reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ` 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief.

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ` 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

IN THE COURT OF SUSHIL KUKREJA, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, SHIMLA, (H.P).

Ref. No. 29 of 2014.
Instituted on. 10.3.2014.
Decided on 30.3.2016.

Santresh W/o Shri Dalip Kumar R/o VPO Nauni, District Solan, HP through Shri J.C Bhardwaj, President HP AITUC, HQ Saproon, Solan, HP. . .*Petitioner.*

Vs.

1. M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli through its Advisor.

2. Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP thought the Registrar.

……*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, AR.

For respondent no.1 : Already ex-parte.

For respondent no.2. : Shri Vivek Kalia, Advocate vice Shri M.P Kanwar, Advocate

AWARD

The following reference has been sent by the appropriate government for adjudication:

"Whether termination of services of Smt. Santresh W/o Shri Dalip Kumar R/o VPO Nauni, District Solan, HP w.e.f. 13.10.2009 by i) Hony, Advisor M/s Sanitation Promotion and Development Society, 5-B, Pocket-2, Sector-6 Dwarka, New Dehli (contractor society) and ii) The Registrar, Dr. Y.S Parmar University of Horticulture and Forestry Nouni, District Solan, HP (Principal Employer) however no registration certificate and licence was respectively obtained by the Principal Employer and Contractor as provided in the Labour (R&A) Act, 1970 and not giving her an opportunity of consideration for re-employment by the employers from the date her juniors were allegedly employed, thus in violation of provisions of section 25-F, 25-G & H of the ibid Act and further demand to declare her direct employee of the Principal employer is legal and justified, if not, what amount of back wages, seniority, past service benefits, compensation and relief the above worker is entitled to from the above employers/ management?"

2. In nutshell, the case of the petitioner is that on 20.11.2007, she was engaged by the principal employer i.e Registrar of Dr. Y.S Parmar University of Horticulture and Forestry Nauni, District Solan, HP (hereinafter referred to as University) as safai karmachari/worker but her name was not entered on the roll of the University and was unrolled with the so called name lender, contractor whose address and particulars are not known to the petitioner though her name remained on the roll of contractor till her termination on 28.11.2009. It is further stated that the legitimate dues of the petitioner were neither paid by the contractor nor the University. Since, the contractor was only name, hence the contract was sham, in-genuine and camouflage for all purposes. Even, the petitioner was working under the supervision of official of the University whereas her name was transferred by the principal employer from his roll to the roll of the non-existent contractor without the consent of the workman concerned. The petitioner was working as sweeper and was doing sweeping work in the premises of Department of Forestry & Horticulture, Library etc., and sometimes she had also been deployed to work as sweeper in the Administration Block of the University and as such the work which was being performed by the petitioner was never incidental but it is of permanent in nature and as such the services rendered by the petitioner under the control

of University and her name on the roll of contractor amounts to unfair labour practice which are prohibited under section 10(2) of the Contract Labour (R&A) Act 1970 (hereinafter referred to as Contract Labour Act). It is also stated that neither the University had applied to employ the workmen for any work through contractor nor any licence had been obtained by the contractor from the licensing officer, hence, any recruitment without obtaining any valid licence of contractor, the workmen deemed to be a employee of the University. The petitioner had worked for more than two years continuously and completed 240 days in each calendar year preceding her termination. The services of the petitioner had been terminated without any notice, chargesheet and without the compliance of sections 25-N, 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as Act) which is a mandatory provision of law and even juniors have been retained by the respondents in violation of the provisions of section 25-G and 25-H of the Act. The authorities of the University have indulged in unfair labour practice with the help of contractor and the sudden removal of the petitioner by the University have made her integrity doubtful in the eyes of one and all, who is still unemployed and even while terminating the services of the petitioner, the officials of the University have restored to the formula of "hire and fire" as no enquiry had been conducted against her. Against this back-drop a prayer has been made that the petitioner be declared the employee of the University and she be re-instated in service with seniority and continuity along- with back-wages.

3. Before, I proceed further it is important to mention here that the respondent no.1 (contractor) was duly served but did not put appearance before this Court, hence, vide order dated 8.5.2013, proceeded against ex-parte.

4. By filing detailed reply, the respondent no.2 (university) had contested the claim of the petitioner wherein preliminary objections had been taken that there is no relationship of principal employer and employee between the petitioner and the respondent, the claim of the petitioner is bad for non-joinder of necessary party, suppression of material facts and the petition has been filed by the petitioner in connivance with the contractor. On merits, it has been denied that the petitioner was engaged as safai karamchari in the University. The petitioner was not the direct employee of the University and the salary had not been paid to her by the respondent directly and even the work performed by the petitioner had never been controlled and supervised by the respondent. It is asserted that the work of safai was given to the contractor who filed quotation/tender for the job of safai karamchari/cleaners of the university and even no record of the employee of the contractor had been maintained by the respondent university. It is further asserted that the respondent university neither engaged/appointed the petitioner as safai karmachari in the University nor terminated her services on 28.11.2009 as there is no record with the respondent university regarding the workers of the contractor. It is denied that the contractor was only name lender and as such the contract was sham, ingenuine and camouflage for any purpose and that the petitioner was working under the supervision of the official of the respondent university. It is further denied that the petitioner was engaged on 20.11.2007 and the work performed by her is of permanent in nature. The provisions of section 10(2) of the Contract Labour (R&A) Act, 1970 is not applicable. It is also denied that the contractor or his agents were not present in the University to supervise the work of the employee. Since, the petitioner was not the employee of respondent university, hence, the question of issuing notice for termination of services and filling chargesheet and to pay retrenchment compensation does not arise at all. The respondent university prayed for the dismissal of the claim petition.

5. By filing rejoinder, the petitioner reaffirmed her allegations by denying those of the respondents.

6. Pleadings of the parties gave rise to the following issues which were struck on 4.4.2014.

11. Whether the termination of the services of the petitioner w.e.f. 13.10.2009 by the respondents in violation of the provisions of sections 25-F, 25-G and 25-H is illegal and unjustified as alleged?

OPP……

12. Whether demand of the petitioner to declare her the direct employee of the principal employer in the absece of registration certificate and licence by the Principal employer and contractor as provided under the Contract Labour (R&A) Act, 1970 is legal and justified?

OPP……..

13. Whether there is no relationship of principal employer and employee between the petitioner and respondent no.2 (Dr. Y.S Parmar University) as alleged?

OPR-2…..

14. If issue no.1 & 2 are decided in affirmative and issue no.3 in negative to what service benefits the petitioner is entitled to?

OPP……..

15. Relief.

7. Besides having heard the AR for the petitioner and learned counsel for the respondent no.2 (university), I have also gone through the record of the case carefully.

8. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	No.
Issue no.3	Yes.
Issue no.4	Entitled to lump sum compensation.
Relief.	Reference partly answered in favour of the petitioner and against respondent no.1 contractor.

Reasons for findings

Issues no.2 & 3.

9. Being interlinked and co-related, all these issues are taken up together for discussion and decision.

10. The AR for the petitioner contended that the petitioner is entitled to be declared as permanent workman of respondent no.2 University right from the date of her joining of services and she is entitled to the full wages and consequential benefits. He further contended that there is no contract between the respondent university and so called contract to engage the workers through contractor is sham, ingenuine and camouflage for all purposes. He also contended that the petitioner had completed 240 working days in each calendar year preceding her termination and her termination without the compliance of the provisions of the Act is illegal and unjustified.

11. On the other hand, the learned counsel for the respondent no.2 University contended that the petitioner was engaged through contractor i.e respondent no.1 under the provisions of Contract Labour Act. He further contended that there was no relationship of employer and employee between the parties and the University had availed the services of the petitioner and other workers through the contractor.

12. The petitioner stepped into the witness box as PW-1 and tendered her affidavit Ex. PA in examination-in-chief wherein she reiterated almost all the averments as made in the claim petition. In cross-examination, she stated that she cannot produce any appointment letter issued by respondent no.2 and any other proof and she also cannot produce any salary certificate issued by respondent no.2. She admitted that she along-with others had filed one complaint against respondent no.1 (M/s Sanitation Promotion and Development Society) regarding minimum wages before Labour Officer, Solan. She further admitted that the respondent no.1 had made payment to settle the claim and to receive the said payment she had put her signatures on the receipt Ex. R-1. The respondent no.1 used to pay the salary @ 70/- per day. She denied that her services were terminated by respondent no.1 but explained that her services had been terminated by respondent no.2. She denied that the supervision was done by the respondent no.2 but admitted that one Mr. Mukesh of the Society used to make payment.

13. On the contrary, the respondent no.2 examined two witnesses. RW-1 Shri V.K Sharma, Executive Engineer, tendered his affidavit Ex. R-1 in examination-in-chief wherein he reiterated almost all the averments as stated in the reply filed by respondent university. He also tendered in evidence other documents Ex. R-2 to Ex. R-10. In cross-examination, he admitted that they have obtained the security and permanent address from the contractor, who was working in the name and style of M/s Sanitation Promotion and Development Society, Dwarka New Dehli. He admitted that the University had contacted the contractor after the reference petition but he had not explained any reason as to why he was not appearing before the Court. The University had entered into an agreement with the contractor which is Ex. R-3. He denied that the University had forged the agreement. He further denied that no contractor was in existence. He admitted that they have not applied to the Labour Officer for employing contract labour in the house keeping. He denied that the University had engaged the contractor who was not having any licence and the contractor was only a name lender. He further denied that no labourer was engaged by the contractor and the SDO of the University used to deploy the workman to do the work. The University had issued a notification regarding out sourcing of sweeping work.

14. RW-2 Shri Devinder Kumar, Clerk of Labour Office Solan has stated that the receipt of payment Ex. R-1 has been made by respondent no.1 Sanitation Promotion and Development Society. In cross-examination, he admitted that neither the University had applied under contract Labour (R&A) Act to give any work on contract nor the contractor (respondent no.1) had obtained any licence from the licensing authority.

15. I have heard the AR for the petitioner and learned counsel for respondent no.2 (University) and also gone through the record. On the perusal of the pleadings of the parties, after analyzing evidence and material placed on record and considering the arguments addressed by AR/Counsel for the parties, I am of the firm opinion that the petitioner cannot be deemed to be the direct employee of the University in the absence of registration certificate by the principal employer and licence by the contractor as provided under the Contract Labour Act.

16. As mentioned above, the petitioner had claimed that she was the employee of respondent no.2 (university) whereas the University had stated that she was the employee of respondent no.1 (contractor). At this stage, it would be appropriate to reproduce sections 7 & 12 of the Contract Labour Act.

7. Registration of certain establishments.- (1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment……

12. Licensing of contractors.- (1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer……

As per the provisions of section 7 & 12 of the aforesaid Act, the principal employer i.e respondent no.2 (University) should have a certificate of registration from the prescribed authority and secondly the contractor i.e respondent no.1 should have a licence issued by competent authority i.e the Labour Department. On perusal of the record, it is clear that neither the principal employer (university) had the certificate of registration from the prescribed authority nor the contractor had a licence issued by the competent authority. RW-2, Shri Devinder Kumar an official from the Labour Office had categorically admitted in cross-examination that neither the University had applied under the Contract Labour Act to give any work on contract nor the contractor had obtained any licence from the authority.

17. Now, the question which arises for consideration before this Court is as to whether the petitioner and other workers would be deemed to be direct employees of the respondent University because their engagement as contract labour was in violation of sections 7, and 12 of the Regulation Act as on the date of engagement of the petitioner, neither the University had a certificate of registration nor the respondent no.1 contractor was holding a licence under section 12 of the Contract Labour Act ? This question was considered by the **Hon'ble Supreme Court in AIR 1992 SC 457, titled as Dena Nath & Ors Vs. National Fertilizers Ltd. And others** and it was held as under:

"20……..The Act as can be seen from the scheme of the Act merely regulates the employment of contract labour in certain establishment and provides for its abolition in certain circumstances. The Act does not provide for total abolition of contract labour but it provides for abolition by the appropriate Government in appropriate cases under Section 10 of the Act.

22…….The only consequences provided in the Act where either the principal employer or the labour contractor violates the provision of Sections 9 and 12 respectively is the penal provision, as envisaged under the Act for which reference may be made to Sections 23 and 25 of the Act……..."

The aforesaid judgment was considered by the Constitutional Bench of **Hon'ble Supreme Court in Steal Authority of India Vs. National Union Water Front 2000 (7) SCC-1** in which it was observed as under:

"96. In Dena Naths case (supra), a two-Judge Bench of this Court considered the question, whether as a consequence of noncompliance with Sections 7 and 12 of the CLRA Act by the principal employer and the licensee respectively, the contract labour employed by the principal employer would become the employees

of the principal employer. Having noticed the observation of the three-Judge Bench of this Court in The Standard-Vacuums case (supra) and having pointed out that the guidelines enumerated in sub-section (2) of Section 10 of the Act are practically based on the guidelines given by the Tribunal in the said case, it was held that the only consequence was the penal provisions under Sections 23 and 25 as envisaged under the CLRA Act and that merely because the contractor or the employer had violated any provision of the Act or the Rules, the High Court in proceedings under Article 226 of the Constitution could not issue any mandamus for deeming the contract labour as having become the employees of the principal employer. This Court thus resolved the conflict of opinions on the said question among various High Courts. It was further held that neither the Act nor the Rules framed by the Central Government or by any appropriate Government provided that upon abolition of the contract labour, the labourers would be directly absorbed by the principal employer".

18. Hence, the perusal of the aforesaid judgments of the Hon'ble Apex Court shows that the consequence of violation of the Contract Labour Act i.e non registration of the establishment under section 7 and non-possession of the licence under section 12 of the Act would not result in the absorption of concerned workman by the principal employer rather it would result in prosecution under section 23/25 of the Act. Therefore, in view of the aforesaid legal position, there is no force in the contention of the AR for the workman that in view of the fact that respondent no.2 University was not having certificate of registration under section 7 and the contractor was not having any licence under section 12 of the Contract Labour Act, the petitioner and other workmen would be deemed to be the direct employees of the University.

19. Now, the next question which arises for consideration before this Court is as to whether the contract was sham, ingeniune and camouflage as contended by the AR for the petitioner. As per the statement of claim, the petitioner and other workers were engaged as safaikarmacharies and they were doing the work in the premises of University in the departments of Forestry, Horticulture, Library etc. of respondent no.2 University and some-times they had also been deployed to work as sweepers in the Administrative Block of the University.

20. It is by now well settled that if the industrial adjudicator finds the contract between the principal employer and the contractor to be a sham, nominal and a camouflage to deny employment benefits to the employee, it can grant relief to the employee by holding that the workman is the direct employee of the principal employer. **In (2009) 13 SCC titled as International Airport Authority of India Vs. International Air Cargo Workers Union and Anr**., it has been held by the Hon'ble Apex Court as under:

"36. But where there is no abolition of contract labour under section 10 of CLRA Act, but the contract labour contend that the contract between principal employer and contractor is sham and nominal, the remedy is purely under the ID Act. The principles in Gujarat Electricity Board continue to govern the issue. The remedy of the workmen is to approach the industrial adjudicator for an adjudication of their dispute that they are the direct employees of the principle employer and the agreement is sham, nominal and merely a camouflage, even when there is no order under section 10(1) of CLRA Act.

37. The industrial adjudicator can grant the relief sought if it finds that contract between principal employer and the contractor is sham, nominal and merely a camouflage to deny employment benefits to the employer and that there is in fact a direct employment, by applying tests like: who pays the salary; who has the power to

remove/dismiss from service or initiate disciplinary action; who can tell the employee the way in which the work should be done, in short who has direction and control over the employee. But where there is no notification under section 10 of the CLRA Act and where it is not proved in the industrial adjudication that the contract was sham/nominal and camouflage, then the question of directing the principal employer to absorb or regularize the services of the contract labour does not arise.

In the aforesaid judgment, the Hon'ble Supreme Court also explained the terms "control" and "supervision" which reads as under:

"38. The tests that are applied to find out whether a person is an employee or an independent contractor may not automatically apply in finding out whether the contract labour agreement is a sham, nominal and is a mere camouflage. For example, if the contract is for supply of labour, necessarily, the labour supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labour, when such labour is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

53. 13…… Merely because the contract labour work is under the supervision of the officers of the principal employer, it cannot be taken as evidence of direct employment under the principal employer.

54. ……..Exercise of some control over the activities of contract labour while they discharge their duties as labourers, is inevitable and such exercise is not sufficient to hold that the contract labour will become the direct employees of the principle employer."

21. In the back-ground of the aforesaid legal position, in the instant case except for the bald statement of the petitioner, there is no other evidence on record to suggest that she was doing the work under the direct supervision of the officials of the University and that the contract was sham, ingenuine, camouflage for all purposes. Rather in cross-examination, she admitted that neither she can produce any appointment letter or documentary proof by the respondent no.2 University appointing her as safaikarmachari nor any salary certificate issued by respondent no.2 University. She further admitted that she along-with other workers had filed a complaint against the respondent no.1 contractor regarding minimum wages before the Labour Officer Solan. She also admitted that the respondent no.1 contractor had made payment to settle the claim and she had put her signatures on the receipt Ex. R-1. She further admitted that the contractor used to pay her salary @ Rs. 70/- per day. She denied that the supervision was done by the University and admitted that one Mr. Mukesh of the contractor society used to make payment.

22. Therefore, the cross-examination of the PW-1 makes it clear that the contractor used to pay her salary @ ₹ 70 per day. As per her own admission, neither any appointment letter nor any salary certificate was issued to the petitioner by the University rather she had filed a complaint against the contractor regarding minimum wages before the Labour Officer Solan and the contractor had made payment to her to settle the claim and she had put her signatures on the receipt. RW-2 an official from the Labour Office Solan had also categorically stated that the receipt of payment Ex. R-1 has been made by the respondent no.1 contractor. There is also no satisfactory evidence on record to suggest that the petitioner and other workers were under the direct supervision and control of respondent no.1 University. Moreover, RW-1 Shri V.K Sharma, Executive Engineer had produced the documents Ex. R-2 to Ex. R-8 regarding the outsourcing of sweeping arrangements in the University. As per the same, the respondent no.2 university invited tenders for outsourcing of sweeping work in the University vide notice dated 11.08.2006 Ex. R-2 and the work was awarded to the respondent no.1 contractor for a period of one year vide letter Ex R-3. The contractor started the work from 1. 11.2006 and the one year period was considered w.e.f 1.11.2006 to 31.10.2007 vide letter of Executive Engineer(Design) dated 20.10.2006 Ex R-4. The validity of the contract was further extended upto 31.01.2008 on the same terms and conditions vide letter Ex R-5. After expiry of the contract the university again invited tenders vide notice Ex R-6 and the work was again awarded to the contractor for a period of one year w.e.f. 1.2.2008 to 31.01.2009 vide letter Ex R-7 and the contract was further extended for one year w.e.f 1.02.2009 to 31.01.2010 vide letter Ex R-8. Therefore, the perusal of the aforesaid documents shows that the respondent no.2 University had outsourced the arrangements of the sweeping work to the respondent no.1 contractor. Moreover, the University is not a private body and in the absence of any evidence to the contrary, it cannot be said that the contract entered by the University with the contractor was sham, ingenuine and camouflage.

23. Hence, in view of the evidence led by the parties, it cannot be said that the petitioner was the direct employee of the University and the contract between the university and contractor is sham, ingenuine and camouflage for all purposes and as such it has been established that there is no relationship of employer and employee between the petitioner and respondent no.2 university. Accordingly, both these issues are decided in favour of respondent no.2 and against the petitioner.

Issue no.1.

24. Since, I have held under issues no.2 & 3 above, that the petitioner was the employee of respondent no.1 contractor, now, it has to be seen as to whether the services of the petitioner had been illegally terminated by the respondent no.1. Before, I proceed further it is relevant to mention here that after receiving the reference by this Court, notices were issued to both the respondents but none appeared on behalf of the respondent no.1 Contractor despite having been served, hence, he was proceeded against ex-parte vide order dated 8.5.2013. The petitioner in her claim petition as well as in her affidavit by way of evidence Ex. PA has stated as PW-1 that she was engaged as safaikaramchari on 20.11.2007 and worked as such till 28.11.2009. Since, the evidence led by the petitioner remained un-rebutted as the respondent no.1 did not appear to rebut this testimony of the petitioner, her evidence is sufficient to prove that she had worked for 240 days in twelve calendar months preceding her termination. Therefore, before terminating the services of the petitioner, it was incumbent upon the respondent no.1 to have complied with the provisions of section 25-F of the Act which lay down certain conditions precedent to the retrenchment of a workman (workmen) and requires the employer to comply with those conditions as per clauses (a) to (c) which are mandatory in nature. It has been held by our own Hon'ble High Court in **Latest HLJ 2007 (HP) 776 titled as State of Himachal Pradesh Vs. Sohan Lal** that the settled law in counting 240 days is that the same has to be calculated preceding the date of retrenchment during twelve calendar months and not a year. The relevant extract of the aforesaid judgment is reproduced as under:

"2**.** I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year."

In 2010 (5) SCC 497 titled as Anoop Sharma Vs. Executive Engineer, Public Health division no.1, Panipat (Haryana), the Hon'ble Supreme Court has held that the termination of the services of an employee by way of retrenchment without complying with the provisions of section 25-F of the Act is a nullity. The relevant extract of aforesaid judgment is reproduced as under:

"16. An analysis of the above reproduced provisions shows that no workman employed in any industry who has been in continuous service for not less than one year under an employer can be retrenched by that employer until the conditions enumerated in Clauses (a) and (b) of Section 25-F of the Act are satisfied. In terms of Clause (a), the employer is required to give to the workman one month's notice in writing indicating the reasons for retrenchment or pay him wages in lieu of the notice. Clause (b) casts a duty upon the employer to pay to the workman at the time of retrenchment, compensation equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.

17. This Court has repeatedly held that Section 25-F(a) and (b) of the Act is mandatory and non-compliance thereof renders the retrenchment of an employee nullity……."

25. Therefore, in view of the aforesaid unrebutted testimony of the petitioner that she had worked continuously for more than 240 days in twelve calendar months preceding her termination, the respondent no.1 was under the legal obligation to comply with the provisions of the section 25-F of the Industrial Disputes Act before terminating her services. But, no such compliance was made by the respondent no.1 contractor, hence, there is violation of section 25-F of the Act, on the part of respondent no.1 contractor. As a result, the termination of petitioner w.e.f. 13.10.2009 is not sustainable in the eyes of law and is hereby set aside. Accordingly, this issue is decided in favour of petitioner and against respondent no.1 contractor.

Issue no.4.

26. Since, I have held under issue no. 1 above, that the termination of the services of the petitioner w.e.f. 13.10.2009 by respondent no.1 without complying with the provisions of the Act is not legal and justified, hence, the question arises as to what service benefits, the petitioner is entitled. It is by now well settled that if the termination of employee is found to be illegal, the relief by way of reinstatement with back-wages is not automatic. The Hon'ble Supreme Court in **Santosh Kumar Seal and others reported in 2010 LLR 677: 2010 III CLR 17 SC,** has held that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that mandatory compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.

27. **In Jagbir Singh Vs. Haryana State Agricultural Marketing Board (2009) 15 SCC 327, the Hon'ble Supreme Court** has held that:

"It is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and maybe wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. **"**

28. In the present case, even though the termination of the petitioner is held to be illegal but her reinstatement will not be appropriate relief in view of the fact that the contract had expired and the respondent no.1 contractor had left the premises of the respondent no.2 University. Therefore, in such a situation, it would not be appropriate to make the order of reinstatement in the present case. Hence, taking into account all the facts and circumstances of the case, the ends of justice would be met, if the lump sum compensation in lieu of reinstatement and back-wages is awarded to the petitioner. Therefore, in my view the petitioner is entitled to receive a suitable, appropriate, just and equitable compensation from the respondent no.1 Contractor and keeping in view the facts and circumstances of the case, it would be quite reasonable and justified if lump sum compensation of ₹ 25,000/- (` Twenty Five Thousand only) is awarded to the petitioner instead of reinstatement. Consequently, this issue is decided in favour of the petitioner and against respondent no.1 Contractor.

Relief

As a sequel to my findings on the aforesaid issues, the claim of the petitioner is partly allowed and as such the respondent no.1 Contractor is directed to pay ` 25,000/- (` Twenty Five Thousand only) as lump sum compensation to the petitioner within three months from today failing which the same shall carry interest @ 9% per annum from the date of publication of this award. The reference is answered accordingly. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion be consigned to records.

Announced in the open Court today on this 30th Day of March, 2016.

(Praveen)

(Sushil Kukreja)
Presiding Judge,
Industrial Tribunal-cum- Labour Court, Shimla.

31.3.2016.
Present: None for the petitioner.
Ms. Ashima Sharma, Advocate vice csl for respondent.

Case called twice but none appeared on behalf of the petitioner despite having been served. It is 10:50 AM. Be called again.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called again

Present: None for the petitioner.
Ms. Ashima Sharma, Advocate vice csl for respondent.

It is 12:55 PM case called again but none appeared on behalf of the petitioner. Be called after lunch.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

Case called after lunch

Present: None for the petitioner.
Ms. Ashima Sharma, Advocate vice csl for respondent.

It is 3:05 PM. Case called repeatedly in pre and post lunch sessions but none appeared on behalf of the petitioner.

For today, this case has been fixed for the service of petitioner. Notice was issued to the petitioner through registered post for today. However, the AD has been received back duly servedanddespite having been duly served, the petitioner has failed to appear before this Court which clearly shows that he is not interested to pursue his case.Therefore, this Court is left with no other alternative but to decide the reference on the basis of the material whatsoever is available on file. The reference sent by the appropriate government for adjudication is as under:

"**Whether termination of the services of Shri Ramesh Kumar S/o Late ShriParmod Singh Village Tain, P.O Sansai, Tehsil Baijnath, District Kangra, HP w.e.f3.1.2014 by the General Manager M/s Wipro Enterprises Ltd., Plot no.77, EPIP, Phase-1 Jharmajri, Badi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of reinstatement, back-wages, compensation and other service benefits the above aggrieved workman is entitled to from the above employer/management?"**

Since, the petitioner has failed to appear before this Court despite having been served and to file statement of claim, I have no hesitation in coming to the conclusion that he has failed to prove that his services had been terminated w.e.f. 3.1.2014 by the respondent in an illegal and unjustified manner. Hence, in the absence of any material/evidence on record, it cannot be held that his services were wrongly and illegally terminated by the respondentand as such the reference is answered against the petitioner and the award is passed accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion be consigned to records.

Announced:
31.3.2016.

(Sushil Kukreja)
Presiding Judge,
Labour Court, Shimla.

ब अदालत मोहिन्द्र सिंह राणा कार्यकारी दण्डाधिकारी, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्रीमती संतोष कुमारी पत्नी श्री सन्नी कुमार, निवासी गांव कुठेड, डाकघर बगठार, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.–प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थिया ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यान–हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसकी पुत्री जीविका ठाकुर की जन्म तिथि 12–08–2011 है, जोकि ग्राम पंचायत टप्पर के रिकार्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थिया की पुत्री की जन्म तिथि ग्राम पंचायत टप्पर के रिकार्ड में दर्ज करने पर, यदि किसी को कोई उजर–एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 24–05–2016 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 23–04–2016 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता द्वितीय वर्ग, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

कामिनी सपुत्री श्री किशन चन्द, निवासी गांव कोटा, डाकघर द्रडडा, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.–प्रार्थना–पत्र बराए नाम दरुस्ती बारे।

उपरोक्त प्रार्थिया ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यान–हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसका सही नाम कामिनी है, जोकि ग्राम पंचायत द्रडडा के रिकार्ड में सही दर्ज है। लेकिन राजस्व विभाग के मुहाल धरोटा प0 वृत रूलियाणी में गलती से अर्चना देवी दर्ज है, जिसकी दरुस्ती की जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थिया कामिनी के नाम दरुस्ती बारे यदि किसी को कोई उजर–एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23–5–2016 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम दरूस्ती के आदेश दे दिए जाएंगे।

आज दिनांक 13–4–2016 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर। मोहिन्द्र सिंह राणा,
सहायक समाहर्ता द्वितीय वर्ग,
डलहौजी।

ब अदालत अनिल भारद्वाज कार्यकारी दण्डाधिकारी, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री NORBU DHUNDUP सपुत्र श्री YESHI NGODUP, निवासी मिडल बकरोटा, डाकघर डलहौजी, तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.–प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यान–हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसकी (NORBU DHUNDUP) जन्म तिथि 7–10–97 है, जोकि नगर परिषद् डलहौजी के रिकार्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि नगर परिषद् डलहौजी के रिकार्ड में दर्ज करने पर, यदि किसी को कोई उजर–एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23–5–2016 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 20–04–2016 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

अनिल भारद्वाज,
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

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ब अदालत अनिल भारद्वाज कार्यकारी दण्डाधिकारी, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री योगेन्द्र कुमार सपुत्र श्री सिंघू राम, निवासी गांव गुनियाला, डाकघर व तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.–प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यान–हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसकी पुत्री सोनाक्षी की जन्म तिथि 27–6–2011 है, जोकि ग्राम पंचायत ओसल के रिकार्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की पुत्री की जन्म तिथि ग्राम पंचायत ओसल के रिकार्ड में दर्ज करने पर, यदि किसी को कोई उजर–एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23–5–2016 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 20–04–2016 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर।

अनिल भारद्वाज,
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

ब अदालत श्री अनिल भारद्वाज कार्यकारी दण्डाधिकारी, डलहौजी, जिला चम्बा, हिमाचल प्रदेश

श्री दीपक कुमार सपुत्र श्री सुरेन्द्र कुमार, निवासी गांव ढुडियारा, डाकघर बैली तहसील डलहौजी, जिला चम्बा, हिमाचल प्रदेश।

विषय.–प्रार्थना–पत्र जेर धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969.

उपरोक्त प्रार्थी ने अधोहस्ताक्षरी की अदालत में प्रार्थना–पत्र, ब्यान–हल्फी वमय अन्य कागजात इस आश्य से गुजारा है कि उसकी जन्म तिथि 05–7–1991 है, जोकि ग्राम पंचायत जियुन्ता के रिकार्ड में दर्ज न है। जिसे दर्ज किया जावे।

इस सम्बन्ध में सर्वसाधारण जनता को बजरिया इश्तहार सूचित किया जाता है कि प्रार्थी की जन्म तिथि ग्राम पंचायत जियुन्ता के रिकार्ड में दर्ज करने पर, यदि किसी को कोई उजर–एतराज हो तो वह असालतन या वकालतन अदालत अधोहस्ताक्षरी दिनांक 23–05–2016 को हाजिर आकर अपना एतराज दर्ज करवा सकता है। हाजिर ना आने की सूरत में एक तरफा कार्यवाही अमल में लाई जा करके नाम व जन्म तिथि दर्ज करने के आदेश दे दिए जाएंगे।

आज दिनांक 21–04–2016 को मेरे हस्ताक्षर व अदालत मोहर से जारी हुआ।

मोहर। अनिल भारद्वाज,
कार्यकारी दण्डाधिकारी,
डलहौजी (हि0 प्र0)।

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ब अदालत तहसीलदार एवम् कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा

श्रीमति तुलसी देवी

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता

श्रीमति तुलसी देवी पत्नी श्री गोपी राम निवासी तोतारानी, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि उसके पुत्र नाम अर्जुन कुमार की जन्म दिनांक 15–11–1997 है परन्तु ग्राम पंचायत भतल्ला में जन्म पंजीकृत न है अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त बच्चे अर्जुन कुमार की जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 7–5–16 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 22–4–16 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर अदालत। हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
धर्मशाला।

ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील धर्मशाला, जिला कांगड़ा

श्री वीर भूषण सूद

बनाम

आम जनता

विषय.–प्रार्थना–पत्र जेरे धारा 13(3) हिमाचल प्रदेश पंजीकरण अधिनियम, 1969.

नोटिस बनाम आम जनता

श्री वीर भूषण पुत्र श्री रोशन लाल सूद निवासी रामनगर, तहसील धर्मशाला, जिला कांगड़ा ने इस अदालत में शपथ पत्र सहित मुकद्दमा दायर किया है कि उसकी पुत्री नाम प्रीती सूद की जन्म दिनांक 09–08–1975 है परन्तु एम0सी0 / ग्राम पंचायत धर्मशाला में जन्म तिथि पंजीकृत न है अतः इसे पंजीकृत किये जाने के आदेश दिये जायें। इस नोटिस के द्वारा समस्त जनता को तथा सम्बन्धित सम्बन्धियों को सूचित किया जाता है कि यदि किसी को उपरोक्त बच्चे प्रीती सूद की जन्म तिथि पंजीकृत किये जाने बारे कोई एतराज हो तो वह अपना एतराज हमारी अदालत में दिनांक 7–5–16 को असालतन या वकालतन हाजिर आकर अपना एतराज पेश कर सकता है अन्यथा मुताबिक शपथ पत्र जन्म तिथि पंजीकृत किये जाने बारे आदेश पारित कर दिये जायेंगे।

आज दिनांक 22–4–16 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर अदालत।

हस्ताक्षरित / –
कार्यकारी दण्डाधिकारी,
धर्मशाला।

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ब अदालत जनाब सहायक समाहर्ता एवं कार्यकारी दण्डाधिकारी प्रथम श्रेणी, ज्वाली, जिला कांगड़ा हि0 प्र0

श्रीमति लक्ष्मी देवी पत्नी राजेश कुमार निवासी महाल फहरियां मौजा ज्वाली तहसील ज्वाली जिला कांगड़ा हि0 प्र0।

बनाम

आम जनता

प्रार्थना पत्र जेर धारा 13 (3) जन्म एवं मृत्यु पंजीकरण अधिनियम 1969.

श्रीमति लक्ष्मी देवी पत्नी राजेश कुमार गांव फहरियां व डा0 फहरियां तहसील ज्वाली जिला कांगड़ा हि0 प्र0 ने इस अदालत में प्रार्थना पत्र गुजारा है कि श्री सूर्याश चौधरी पुत्र राजेश कुमार का जन्म दिनांक 05–01–2014 को गांव फहरियां में हुआ था, जो गल्ती से पंचायत रिकार्ड में पंजीकृत नहीं करवा सकी। अब यह जन्म तिथि पंचायत रिकार्ड में दर्ज करवाना चाहती है।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण बारे में कोई उजर व एतराज हो तो वह दिनांक 23–5–2016 को सुबह 10 बजे न्यायालय में असालतन या वकालतन हाजिर आकर पेश कर सकता है। अन्यथा हाजिर न आने की सूरत में यकतरफा

कार्यवाही अमल में लाई जाकर जन्म तिथि पंचायत रिकार्ड में पंजीकृत करने के आदेश पारित कर दिये जायेंगे। इसके उपरान्त कोई एतराज न सुना जायेगा।

आज दिनांक ———————— को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर अदालत। हस्ताक्षरित / –
सहायक समाहर्ता एवं कार्यकारी दण्डाधिकारी प्रथम श्रेणी,
ज्वाली।

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ब अदालत श्री शिव मोहन सिंह सैणी–सहायक समाहर्ता प्रथम श्रेणी, शाहपुर, जिला कांगड़ा हि0 प्र0

मुकद्दमा तकसीम भूमि तारीख पेशी : 18 मई, 2016

श्री वहादुर सिंह पुत्र भाग सिंह, निवासी ततवाणी़, तहसील शाहपुर, जिला कांगड़ा हि0 प्र0।

बनाम

श्री अजय कुमार आदि प्रतिवादीगण।

मुकद्दमा वावत तकसीम भूमि खाता नं0 : 5 खतौनी नं0 : 7 खसरा किता–2 रकवा तादादी : 0–13–26 है0 वाक्या महाल ततवाणी मौजा बडंज तह0 शाहपुर जि0 कांगड़ा हि0 प्र0 मुताबिक जमाबंदी वर्ष 2007–08।

नोटिस बनाम : विन्ता देवी पत्नी सोनू कुमार निवासी ज्वाली, तह0 ज्वाली।

उपरोक्त विषय से संबन्धित तकसीम भूमि की मिसल अधोहस्ताक्षरी के पास विचाराधीन है जिसमें उक्त प्रतिवादी को इस अदालत द्वारा समन जारी हुए परन्तु समन विना तामील के प्राप्त हुए। इसलिए इस अदालत को विश्वास हो चुका है कि उक्त प्रतिवादी की तामील साधारण तरीके से नहीं हो सकती है। अतः इस इश्तहार समाचार पत्र द्वारा उक्त प्रतिवादी को सूचित किया जाता है कि उपरोक्त विषय के सम्बन्ध में दिनांक 18 मई 2016 को दोपहर बाद 2 बजे इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष / एतराज / उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक ———————— को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
शाहपुर, जिला कांगड़ा हि0 प्र0।

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ब अदालत श्री शिव मोहन सिंह सैणी–सहायक समाहर्ता प्रथम श्रेणी, शाहपुर, जिला कांगड़ा हि0 प्र0

मुकद्दमा तकसीम भूमि तारीख पेशी : 23 मई, 2016

श्री ओंकार सिंह पुत्र सूंकू, निवासी गोरड़ा, तहसील शाहपुर, जिला कांगड़ा हि0 प्र0।

बनाम

श्री अनूप कुमार, प्रवीण कुमार पुत्र प्रीतम, वेद प्रकाश पुत्र सूंकू, माया देवी, अरूणा देवी पुत्रियां सूंकू, मोनिका देवी पुत्री ओंकार सिंह, अनूप कुमार पुत्र प्रीतम समस्त निवासीगण महाल भनाला तह0 शाहपुर

प्रतिवादीगण।

मुकद्दमा वावत तकसीम भूमि खाता नं0 : 117 खतौनी नं0 : 198 खसरा किता –2 रकवा तादादी : 0–24–90 है0 वाक्या महाल कमलाहड़ी मौजा भनाला तह0 शाहपुर जि0 कांगड़ा हि0 प्र0 मुताबिक जमाबंदी वर्ष 2010–11.

उपरोक्त विषय से सम्बन्धित तकसीम भूमि की मिसल अधोहस्ताक्षरी के पास विचाराधीन है जिसमें उपरोक्त प्रतिवादीगण को इस अदालत द्वारा समन जारी हुए परन्तु समन विना तामील के प्राप्त हुए। इसलिए इस अदालत को विश्वास हो चुका है कि उपरोक्त प्रतिवादीगण की तामील साधारण तरीके से नहीं हो सकती है। अतः इस इश्तहार समाचार पत्र द्वारा उपरोक्त प्रतिवादीगण को सूचित किया जाता है कि उपरोक्त विषय के सम्बन्ध में दिनांक 23 मई 2016 को दोपहर बाद 2 बजे इस अदालत में असालतन या वकालतन हाजिर आकर अपना पक्ष / एतराज / उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक ——————————को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी,
शाहपुर, जिला कांगड़ा हि0 प्र0।

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ब अदालत श्री शिव मोहन सिंह सैणी, सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, शाहपुर, जिला कांगड़ा हिमाचल प्रदेश

विधी चन्द पुत्र किरलू राम निवासी डुढ़म्ब खास तहसील शाहपुर जिला कांगड़ा हिमाचल प्रदेश

बनाम

आम जनता

विषय.––महाल डुढ़म्ब खास के राजस्व रिकॉर्ड में नाम की दरुस्ती बारे।

प्रार्थी ने इस अदालत में शपथ–पत्र सहित दरख्वास्त गुजारी है कि उसका नाम तहसील शाहपुर के अन्तर्गत पटवार वृत्त डुढ़म्ब के महाल – डुढ़म्ब खास के राजस्व अभिलेख में वुधिया पुत्र किरलू दर्ज है जोकि गलत इन्द्राज है प्रार्थी उक्त राजस्व रिकार्ड में अपने दरूस्त नाम विधी चन्द पुत्र किरलू का इन्द्राज करवाना चाहता है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के नाम की दरुस्ती करने बारे यदि किसी को कोई उजर / एतराज हो तो वह दिनांक 23–05–2016 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

आज दिनांक ———————— को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
शाहपुर, जिला कांगड़ा हि0 प्र0।

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ब अदालत श्री शिव मोहन सिंह सैणी, सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, शाहपुर, जिला कांगड़ा हिमाचल प्रदेश

तारीख पेशी : 18—5—2016

ओंकार सिंह पुत्र सन्त राम, निवासी लदवाड़ा, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

विषय.——महाल हार, मुंदला, पाहलम के राजस्व रिकॉर्ड में नाम की दरुस्ती बारे।

प्रार्थी ने इस अदालत में शपथ—पत्र सहित दरख्वास्त गुजारी है कि उसका नाम तहसील शाहपुर के अन्तर्गत पटवार वृत्त लदवाड़ा के महाल— हार, मुंदला, पाहलम के राजस्व अभिलेख में क्रमशः डूमणू राम पुत्र मस्त राम, डूमणू राम पुत्र सन्त राम, डूमणू राम पुत्र सन्ता दर्ज है, जो कि गलत इन्द्राज है, प्रार्थी उक्त राजस्व रिकार्ड में अपने व अपने पिता के दरूस्त नाम ओंकार सिंह पुत्र सन्त राम का इन्द्राज करवाना चाहता है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के नाम की दरुस्ती करने बारे यदि किसी को कोई उजर/एतराज हो तो वह दिनांक 18—05—2016 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
शाहपुर, जिला कांगड़ा, हि0 प्र0।

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ब अदालत श्री शिव मोहन सिंह सैणी, सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार, शाहपुर, जिला कांगड़ा हि0 प्र0

तारीख पेशी : 17—5—2016

रेणुका पुत्री धनबहादुर, निवासी चड़ी, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

विषय.––राजस्व रिकॉर्ड के महाल चड़ी में नाम की दरुस्ती बारे।

प्रार्थी ने इस न्यायालय में शपथ–पत्र सहित दरख्वास्त गुजारी है कि उसका नाम तहसील शाहपुर के राजस्व अभिलेख के महाल व मौजा चड़ी में रेणुका पुत्री धनबहादुर के वजाय रोणकू पुत्री धनबहादुर दर्ज है, जो कि गलत इन्द्राज है। प्रार्थी उक्त राजस्व रिकॉर्ड में सही नाम रेणुका पुत्री धनबहादुर का इन्द्राज करवाना चाहती है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के नाम की दरुस्ती करने बारे यदि किसी को कोई उजर / एतराज हो तो वह दिनांक 17–05–2016 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

आज दिनांक 17–2–16 को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता प्रथम श्रेणी एवं तहसीलदार,
शाहपुर, जिला कांगड़ा हि0 प्र0।

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ब अदालत श्री दीक्षांत ठाकुर, सहायक समाहर्ता द्वितीय श्रेणी, शाहपुर, जिला कांगड़ा, हि0 प्र0

पपिंदर कुमार पुत्र वजीर चन्द, निवासी चड़ी, तहसील शाहपुर, जिला कांगड़ा, हिमाचल प्रदेश

बनाम

आम जनता

विषय.–– महाल चड़ी के राजस्व रिकॉर्ड में नाम की दरुस्ती बारे।

प्रार्थी ने इस न्यायालय में शपथ–पत्र सहित दरख्वास्त गुजारी है कि उसका नाम तहसील शाहपुर के राजस्व अभिलेख के महाल चड़ी मौजा चड़ी में पपिंदर कुमार पुत्र वजीर चन्द के वजाय भूपिंदर पुत्र वजीरा दर्ज है, जो कि गलत इन्द्राज है। प्रार्थी राजस्व रिकॉर्ड में अपने सही नाम पपिंदर कुमार पुत्र वजीर चन्द का इन्द्राज करवाना चाहता है।

अतः इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि उपरोक्त राजस्व रिकार्ड में प्रार्थी के नाम की दरुस्ती करने बारे यदि किसी को कोई उजर / एतराज हो तो वह दिनांक 28–05–2016 को असालतन या वकालतन हाजिर अदालत आकर एतराज पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही की जाएगी। उसके बाद कोई उजर जेरे समायत न होगा।

आज दिनांक ..... को मेरे हस्ताक्षर व मोहर अदालत द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित / –
सहायक समाहर्ता द्वितीय श्रेणी,
शाहपुर, जिला कांगड़ा हि0 प्र0।

न्यायालय तहसीलदार एवं कार्यकारी दण्डाधिकारी, ऊना, जिला ऊना (हि0 प्र0)

दावा संख्या : ...../ Teh. Una/M. Reg./20.....

श्री अच्छर सिंह पुत्र रामकिशन, जात जट्ट, गांव लोअर देहलां, डा0 लोअर देहलां, तहसील ऊना, जिला ऊना (हि0 प्र0)।

बनाम

आम जनता

दावा अन्तर्गत धारा 8(4) विवाह पंजीकरण अधिनियम, 1996.

उपरोक्त मुकद्दमा उनवान बाला में श्री अच्छर सिंह पुत्र रामकिशन, जात जट्ट, गांव लोअर देहलां, डा0 लोअर देहलां, तहसील ऊना, जिला ऊना (हि0 प्र0)। ने इस न्यायालय में प्रार्थना–पत्र प्रस्तुत किया है कि उसका विवाह दिनांक 08–02–2015 को श्रीमती मोनिका देवी पुत्री श्री अवतार सिंह, जात जट्ट, गांव धदियाल, डाकघर डेराबावा, तहसील ऊना, जिला ऊना (हि0 प्र0) के साथ हुआ है। लेकिन अज्ञानता के कारण अपने विवाह का इन्द्राज स्थानीय रजिस्ट्रार विवाह पंजीकरण लोअर देहलां, तहसील ऊना, जिला ऊना (हि0 प्र0) में न करवा सका।

अतः इस सन्दर्भ में आम जनता को सूचित किया जाता है कि उपरोक्त वर्णित के विवाह का इन्द्राज रजिस्ट्रार विवाह स्थानीय पंजीकरण लोअर देहलां, तहसील ऊना, जिला ऊना (हि0 प्र0) में दर्ज करवाने बारे किसी को एतराज हो तो वह दिनांक 26–05–2016 को इस न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है, अन्यथा इसके बाद उक्त वर्णित विवाह पंजीकरण हेतु आगामी कार्यवाही अमल में लाई जायेगी। इसके बाद कोई भी एतराज काबले समायत न होगा।

आज दिनांक 26–04–2016 को मेरे हस्ताक्षर व न्यायालय की मोहर द्वारा जारी हुआ।

मोहर।

हस्ताक्षरित / –
तहसीलदार एवं कार्यकारी दण्डाधिकारी,
ऊना, जिला ऊना (हि0 प्र0)।

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है